

the Transfer of Manufacturing Technology, to the Manufacturing Outreach Center, to other technology training entities, and directly to others as determined appropriate by the Secretary of Labor and the Secretary of Commerce. (Pub. L. 103-382, title V, §546, Oct. 20, 1994, 108 Stat. 4055.)

### § 2706. Authorization of appropriations

#### (a) In general

There are authorized to be appropriated to carry out this chapter such sums as may be necessary for each of the fiscal years 1995 through 1997.

#### (b) Availability

Amounts appropriated under subsection (a) of this section shall remain available until expended.

(Pub. L. 103-382, title V, §547, Oct. 20, 1994, 108 Stat. 4055.)

## CHAPTER 30—WORKFORCE INVESTMENT SYSTEMS

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#### CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 701, 712, 721, 751, 772, 773 of this title; title 5 section 3502; title 7 sections 2014, 2015, 2026; title 8 sections 1255a, 1613; title 15 sections 636, 3116; title 18 section 665; title 19 sections 2296, 2311; title 20 sections 1087vv, 6365, 6434, 6453, 6455, 9271, 9272, 9273, 9274, 9275, 9276; title 31 section 6703; title 38 sections 4102A, 4103A, 4213; title 42 sections 603, 1437u, 1474, 3013, 3056, 3056a, 6864, 6873, 7274h, 9806, 11302, 12655m, 12899c, 13823.

#### SUBCHAPTER I—WORKFORCE INVESTMENT DEFINITIONS

##### SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 42 section 603.

#### § 2801. Definitions

In this chapter:

##### (1) Adult

Except in sections 2852 and 2862 of this title, the term “adult” means an individual who is age 18 or older.

##### (2) Adult education; adult education and literacy activities

The terms “adult education” and “adult education and literacy activities” have the meanings given the terms in section 9202 of title 20.

##### (3) Area vocational education school

The term “area vocational education school” has the meaning given the term in section 2302<sup>1</sup> of title 20.

##### (4) Basic skills deficient

The term “basic skills deficient” means, with respect to an individual, that the individual has English reading, writing, or computing skills at or below the 8th grade level on a generally accepted standardized test or a comparable score on a criterion-referenced test.

##### (5) Case management

The term “case management” means the provision of a client-centered approach in the delivery of services, designed—

(A) to prepare and coordinate comprehensive employment plans, such as service strategies, for participants to ensure access to necessary workforce investment activities and supportive services, using, where feasible, computer-based technologies; and

(B) to provide job and career counseling during program participation and after job placement.

<sup>1</sup> See References in Text note below.

**(6) Chief elected official**

The term “chief elected official” means—

(A) the chief elected executive officer of a unit of general local government in a local area; and

(B) in a case in which a local area includes more than one unit of general local government, the individuals designated under the agreement described in section 2832(c)(1)(B) of this title.

**(7) Community-based organization**

The term “community-based organization” means a private nonprofit organization that is representative of a community or a significant segment of a community and that has demonstrated expertise and effectiveness in the field of workforce investment.

**(8) Customized training**

The term “customized training” means training—

(A) that is designed to meet the special requirements of an employer (including a group of employers);

(B) that is conducted with a commitment by the employer to employ an individual on successful completion of the training; and

(C) for which the employer pays for not less than 50 percent of the cost of the training.

**(9) Dislocated worker**

The term “dislocated worker” means an individual who—

(A)(i) has been terminated or laid off, or who has received a notice of termination or layoff, from employment;

(ii)(I) is eligible for or has exhausted entitlement to unemployment compensation; or

(II) has been employed for a duration sufficient to demonstrate, to the appropriate entity at a one-stop center referred to in section 2864(c) of this title, attachment to the workforce, but is not eligible for unemployment compensation due to insufficient earnings or having performed services for an employer that were not covered under a State unemployment compensation law; and

(iii) is unlikely to return to a previous industry or occupation;

(B)(i) has been terminated or laid off, or has received a notice of termination or layoff, from employment as a result of any permanent closure of, or any substantial layoff at, a plant, facility, or enterprise;

(ii) is employed at a facility at which the employer has made a general announcement that such facility will close within 180 days; or

(iii) for purposes of eligibility to receive services other than training services described in section 2864(d)(4) of this title, intensive services described in section 2864(d)(3) of this title, or supportive services, is employed at a facility at which the employer has made a general announcement that such facility will close;

(C) was self-employed (including employment as a farmer, a rancher, or a fisherman) but is unemployed as a result of general economic conditions in the community in which

the individual resides or because of natural disasters; or

(D) is a displaced homemaker.

**(10) Displaced homemaker**

The term “displaced homemaker” means an individual who has been providing unpaid services to family members in the home and who—

(A) has been dependent on the income of another family member but is no longer supported by that income; and

(B) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

**(11) Economic development agencies**

The term “economic development agencies” includes local planning and zoning commissions or boards, community development agencies, and other local agencies and institutions responsible for regulating, promoting, or assisting in local economic development.

**(12) Eligible provider**

The term “eligible provider”, used with respect to—

(A) training services, means a provider who is identified in accordance with section 2842(e)(3) of this title;

(B) intensive services, means a provider who is identified or awarded a contract as described in section 2864(d)(3)(B) of this title;

(C) youth activities, means a provider who is awarded a grant or contract in accordance with section 2843 of this title; or

(D) other workforce investment activities, means a public or private entity selected to be responsible for such activities, such as a one-stop operator designated or certified under section 2841(d) of this title.

**(13) Eligible youth**

Except as provided in subchapters III and IV of this chapter, the term “eligible youth” means an individual who—

(A) is not less than age 14 and not more than age 21;

(B) is a low-income individual; and

(C) is an individual who is one or more of the following:

(i) Deficient in basic literacy skills.

(ii) A school dropout.

(iii) Homeless, a runaway, or a foster child.

(iv) Pregnant or a parent.

(v) An offender.

(vi) An individual who requires additional assistance to complete an educational program, or to secure and hold employment.

**(14) Employment and training activity**

The term “employment and training activity” means an activity described in section 2864 of this title that is carried out for an adult or dislocated worker.

**(15) Family**

The term “family” means two or more persons related by blood, marriage, or decree of court, who are living in a single residence, and are included in one or more of the following categories:

(A) A husband, wife, and dependent children.

(B) A parent or guardian and dependent children.

(C) A husband and wife.

**(16) Governor**

The term “Governor” means the chief executive of a State.

**(17) Individual with a disability**

**(A) In general**

The term “individual with a disability” means an individual with any disability (as defined in section 12102 of title 42).

**(B) Individuals with disabilities**

The term “individuals with disabilities” means more than one individual with a disability.

**(18) Labor market area**

The term “labor market area” means an economically integrated geographic area within which individuals can reside and find employment within a reasonable distance or can readily change employment without changing their place of residence. Such an area shall be identified in accordance with criteria used by the Bureau of Labor Statistics of the Department of Labor in defining such areas or similar criteria established by a Governor.

**(19) Literacy**

The term “literacy” has the meaning given the term in section 9202 of title 20.

**(20) Local area**

The term “local area” means a local workforce investment area designated under section 2831 of this title.

**(21) Local board**

The term “local board” means a local workforce investment board established under section 2832 of this title.

**(22) Local performance measure**

The term “local performance measure” means a performance measure established under section 2871(c) of this title.

**(23) Local educational agency**

The term “local educational agency” has the meaning given the term in section 8801 of title 20.

**(24) Lower living standard income level**

The term “lower living standard income level” means that income level (adjusted for regional, metropolitan, urban, and rural differences and family size) determined annually by the Secretary based on the most recent lower living family budget issued by the Secretary.

**(25) Low-income individual**

The term “low-income individual” means an individual who—

(A) receives, or is a member of a family that receives, cash payments under a Federal, State, or local income-based public assistance program;

(B) received an income, or is a member of a family that received a total family in-

come, for the 6-month period prior to application for the program involved (exclusive of unemployment compensation, child support payments, payments described in subparagraph (A), and old-age and survivors insurance benefits received under section 402 of title 42) that, in relation to family size, does not exceed the higher of—

(i) the poverty line, for an equivalent period; or

(ii) 70 percent of the lower living standard income level, for an equivalent period;

(C) is a member of a household that receives (or has been determined within the 6-month period prior to application for the program involved to be eligible to receive) food stamps pursuant to the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.);

(D) qualifies as a homeless individual, as defined in subsections (a) and (c) of section 11302 of title 42;

(E) is a foster child on behalf of whom State or local government payments are made; or

(F) in cases permitted by regulations promulgated by the Secretary of Labor, is an individual with a disability whose own income meets the requirements of a program described in subparagraph (A) or of subparagraph (B), but who is a member of a family whose income does not meet such requirements.

**(26) Nontraditional employment**

The term “nontraditional employment” refers to occupations or fields of work for which individuals from one gender comprise less than 25 percent of the individuals employed in each such occupation or field of work.

**(27) Offender**

The term “offender” means any adult or juvenile—

(A) who is or has been subject to any stage of the criminal justice process, for whom services under this Act may be beneficial; or

(B) who requires assistance in overcoming artificial barriers to employment resulting from a record of arrest or conviction.

**(28) Older individual**

The term “older individual” means an individual age 55 or older.

**(29) One-stop operator**

The term “one-stop operator” means 1 or more entities designated or certified under section 2841(d) of this title.

**(30) One-stop partner**

The term “one-stop partner” means—

(A) an entity described in section 2841(b)(1) of this title; and

(B) an entity described in section 2841(b)(2) of this title that is participating, with the approval of the local board and chief elected official, in the operation of a one-stop delivery system.

**(31) On-the-job training**

The term “on-the-job training” means training by an employer that is provided to a paid participant while engaged in productive work in a job that—

(A) provides knowledge or skills essential to the full and adequate performance of the job;

(B) provides reimbursement to the employer of up to 50 percent of the wage rate of the participant, for the extraordinary costs of providing the training and additional supervision related to the training; and

(C) is limited in duration as appropriate to the occupation for which the participant is being trained, taking into account the content of the training, the prior work experience of the participant, and the service strategy of the participant, as appropriate.

**(32) Outlying area**

The term “outlying area” means the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

**(33) Out-of-school youth**

The term “out-of-school youth” means—

(A) an eligible youth who is a school dropout; or

(B) an eligible youth who has received a secondary school diploma or its equivalent but is basic skills deficient, unemployed, or underemployed.

**(34) Participant**

The term “participant” means an individual who has been determined to be eligible to participate in and who is receiving services (except followup services authorized under this chapter) under a program authorized by this chapter. Participation shall be deemed to commence on the first day, following determination of eligibility, on which the individual began receiving subsidized employment, training, or other services provided under this chapter.

**(35) Postsecondary educational institution**

The term “postsecondary educational institution” means an institution of higher education, as defined in section 1002 of title 20.

**(36) Poverty line**

The term “poverty line” means the poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of title 42) applicable to a family of the size involved.

**(37) Public assistance**

The term “public assistance” means Federal, State, or local government cash payments for which eligibility is determined by a needs or income test.

**(38) Rapid response activity**

The term “rapid response activity” means an activity provided by a State, or by an entity designated by a State, with funds provided by the State under section 2864(a)(1)(A) of this title, in the case of a permanent closure or mass layoff at a plant, facility, or enterprise, or a natural or other disaster, that results in mass job dislocation, in order to assist dislocated workers in obtaining reemploy-

ment as soon as possible, with services including—

(A) the establishment of onsite contact with employers and employee representatives—

(i) immediately after the State is notified of a current or projected permanent closure or mass layoff; or

(ii) in the case of a disaster, immediately after the State is made aware of mass job dislocation as a result of such disaster;

(B) the provision of information and access to available employment and training activities;

(C) assistance in establishing a labor-management committee, voluntarily agreed to by labor and management, with the ability to devise and implement a strategy for assessing the employment and training needs of dislocated workers and obtaining services to meet such needs;

(D) the provision of emergency assistance adapted to the particular closure, layoff, or disaster; and

(E) the provision of assistance to the local community in developing a coordinated response and in obtaining access to State economic development assistance.

**(39) School dropout**

The term “school dropout” means an individual who is no longer attending any school and who has not received a secondary school diploma or its recognized equivalent.

**(40) Secondary school**

The term “secondary school” has the meaning given the term in section 8801 of title 20.

**(41) Secretary**

The term “Secretary” means the Secretary of Labor, and the term means such Secretary for purposes of section 9273 of title 20.

**(42) State**

The term “State” means each of the several States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

**(43) State adjusted level of performance**

The term “State adjusted level of performance” means a level described in clause (iii) or (v) of section 2871(b)(3)(A) of this title.

**(44) State board**

The term “State board” means a State workforce investment board established under section 2821 of this title.

**(45) State performance measure**

The term “State performance measure” means a performance measure established under section 2871(b) of this title.

**(46) Supportive services**

The term “supportive services” means services such as transportation, child care, dependent care, housing, and needs-related payments, that are necessary to enable an individual to participate in activities authorized under this chapter, consistent with the provisions of this chapter.

**(47) Unemployed individual**

The term “unemployed individual” means an individual who is without a job and who wants and is available for work. The determination of whether an individual is without a job shall be made in accordance with the criteria used by the Bureau of Labor Statistics of the Department of Labor in defining individuals as unemployed.

**(48) Unit of general local government**

The term “unit of general local government” means any general purpose political subdivision of a State that has the power to levy taxes and spend funds, as well as general corporate and police powers.

**(49) Veteran; related definition****(A) Veteran**

The term “veteran” means an individual who served in the active military, naval, or air service, and who was discharged or released from such service under conditions other than dishonorable.

**(B) Recently separated veteran**

The term “recently separated veteran” means any veteran who applies for participation under this chapter within 48 months after the discharge or release from active military, naval, or air service.

**(50) Vocational education**

The term “vocational education” has the meaning given the term in section 2471<sup>2</sup> of title 20.

**(51) Workforce investment activity**

The term “workforce investment activity” means an employment and training activity, and a youth activity.

**(52) Youth activity**

The term “youth activity” means an activity described in section 2854 of this title that is carried out for eligible youth (or as described in section 2854(c)(5) of this title).

**(53) Youth council**

The term “youth council” means a council established under section 2832(h) of this title.

(Pub. L. 105-220, title I, §101, Aug. 7, 1998, 112 Stat. 939; Pub. L. 105-244, title I, §102(d)(1), Oct. 7, 1998, 112 Stat. 1622; Pub. L. 105-332, §3(f), Oct. 31, 1998, 112 Stat. 3126.)

**REFERENCES IN TEXT**

This chapter, referred to in text, was in the original “this title” meaning title I of Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 939, as amended, which enacted this chapter, repealed sections 1501 to 1505, 1511 to 1583, 1592 to 1735, 1737 to 1791h, 1792 to 1792b, 2301 to 2314 of this title, section 211 of Title 40, Appendix, Public Buildings, Property, and Works, sections 11421, 11441 to 11447, 11449, 11450, 11461 to 11466, 11471, and 11472 of Title 42, The Public Health and Welfare, and sections 42101 to 42106 of Title 49, Transportation, enacted provisions set out as notes under sections 1501, 2301, and 2940 of this title and section 11421 of Title 42, and repealed provisions set out as notes under sections 801 and 2301 of this title and section 1255a of Title 8, Aliens and Nationality. For complete classification of title I to the Code, see Tables.

<sup>2</sup> See References in Text note below.

Section 2302 of title 20, referred to in par. (3), defines the term “area vocational and technical education school” but not the term “area vocational education school”.

The Food Stamp Act of 1977, referred to in par. (25)(C), is Pub. L. 88-525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

This Act, referred to in par. (27)(A), is Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 936, as amended, known as the Workforce Investment Act of 1998. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

Section 2471 of title 20, referred to in par. (50), was omitted in the general amendment of chapter 44 (§2301 et seq.) of Title 20, Education, by Pub. L. 105-332, §1(b), Oct. 31, 1998, 112 Stat. 3076.

**AMENDMENTS**

1998—Par. (3). Pub. L. 105-332 substituted “section 2302 of title 20” for “section 2471 of title 20”.

Par. (35). Pub. L. 105-244 substituted “section 1002 of title 20” for “section 1088 of title 20”.

**EFFECTIVE DATE OF 1998 AMENDMENT**

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of Title 20, Education.

**TRANSITIONAL PROVISIONS**

For provisions relating to transition from authority under the Job Training Partnership Act (29 U.S.C. 1501 et seq.) to the workforce investment systems established under this chapter, including provisions relating to regulations, expenditures, and reorganization of functions in the Department of Labor, see section 9276 of Title 20, Education.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 705 of this title; title 20 sections 9202, 9272; title 42 sections 603, 9908.

**SUBCHAPTER II—STATEWIDE AND LOCAL WORKFORCE INVESTMENT SYSTEMS****SUBCHAPTER REFERRED TO IN OTHER SECTIONS**

This subchapter is referred to in sections 2916, 2918, 2931, 2934, 2939, 2944 of this title; title 42 sections 3056h, 4959.

**§ 2811. Purpose**

The purpose of this subchapter is to provide workforce investment activities, through statewide and local workforce investment systems, that increase the employment, retention, and earnings of participants, and increase occupational skill attainment by participants, and, as a result, improve the quality of the workforce, reduce welfare dependency, and enhance the productivity and competitiveness of the Nation.

(Pub. L. 105-220, title I, §106, Aug. 7, 1998, 112 Stat. 945.)

**PART A—STATE PROVISIONS****§ 2821. State workforce investment boards****(a) In general**

The Governor of a State shall establish a State workforce investment board to assist in the development of the State plan described in

section 2822 of this title and to carry out the other functions described in subsection (d) of this section.

**(b) Membership**

**(1) In general**

The State Board shall include—

- (A) the Governor;
- (B) 2 members of each chamber of the State legislature, appointed by the appropriate presiding officers of each such chamber; and
- (C) representatives appointed by the Governor, who are—
  - (i) representatives of business in the State, who—
    - (I) are owners of businesses, chief executives or operating officers of businesses, and other business executives or employers with optimum policymaking or hiring authority, including members of local boards described in section 2832(b)(2)(A)(i) of this title;
    - (II) represent businesses with employment opportunities that reflect the employment opportunities of the State; and
    - (III) are appointed from among individuals nominated by State business organizations and business trade associations;
  - (ii) chief elected officials (representing both cities and counties, where appropriate);
  - (iii) representatives of labor organizations, who have been nominated by State labor federations;
  - (iv) representatives of individuals and organizations that have experience with respect to youth activities;
  - (v) representatives of individuals and organizations that have experience and expertise in the delivery of workforce investment activities, including chief executive officers of community colleges and community-based organizations within the State;
  - (vi)(I) the lead State agency officials with responsibility for the programs and activities that are described in section 2841(b) of this title and carried out by one-stop partners; and
  - (II) in any case in which no lead State agency official has responsibility for such a program, service, or activity, a representative in the State with expertise relating to such program, service, or activity; and
  - (vii) such other representatives and State agency officials as the Governor may designate, such as the State agency officials responsible for economic development and juvenile justice programs in the State.

**(2) Authority and regional representation of board members**

Members of the board that represent organizations, agencies, or other entities shall be individuals with optimum policymaking authority within the organizations, agencies, or entities. The members of the board shall represent diverse regions of the State, including urban, rural, and suburban areas.

**(3) Majority**

A majority of the members of the State Board shall be representatives described in paragraph (1)(C)(i).

**(c) Chairperson**

The Governor shall select a chairperson for the State Board from among the representatives described in subsection (b)(1)(C)(i) of this section.

**(d) Functions**

The State Board shall assist the Governor in—

- (1) development of the State plan;
- (2) development and continuous improvement of a statewide system of activities that are funded under this subchapter or carried out through a one-stop delivery system described in section 2864(c) of this title that receives funds under this subchapter (referred to in this chapter as a “statewide workforce investment system”), including—
  - (A) development of linkages in order to assure coordination and nonduplication among the programs and activities described in section 2841(b) of this title; and
  - (B) review of local plans;
- (3) commenting at least once annually on the measures taken pursuant to section 2323(b)(14)<sup>1</sup> of title 20;
- (4) designation of local areas as required in section 2831 of this title;
- (5) development of allocation formulas for the distribution of funds for adult employment and training activities and youth activities to local areas as permitted under sections 2853(b)(3)(B) and 2863(b)(3)(B) of this title;
- (6) development and continuous improvement of comprehensive State performance measures, including State adjusted levels of performance, to assess the effectiveness of the workforce investment activities in the State as required under section 2871(b) of this title;
- (7) preparation of the annual report to the Secretary described in section 2871(d) of this title;
- (8) development of the statewide employment statistics system described in section 491–2(e) of this title; and
- (9) development of an application for an incentive grant under section 9273 of title 20.

**(e) Alternative entity**

**(1) In general**

For purposes of complying with subsections (a), (b), and (c) of this section, a State may use any State entity (including a State council, State workforce development board, combination of regional workforce development boards, or similar entity) that—

- (A) was in existence on December 31, 1997;
- (B)(i) was established pursuant to section 122 or title VII of the Job Training Partnership Act [29 U.S.C. 1532, 1792 et seq.], as in effect on December 31, 1997; or
- (ii) is substantially similar to the State board described in subsections (a), (b), and (c) of this section; and
- (C) includes representatives of business in the State and representatives of labor organizations in the State.

<sup>1</sup> See References in Text note below.



**(2) References**

References in this Act to a State board shall be considered to include such an entity.

**(f) Conflict of interest**

A member of a State board may not—

(1) vote on a matter under consideration by the State board—

(A) regarding the provision of services by such member (or by an entity that such member represents); or

(B) that would provide direct financial benefit to such member or the immediate family of such member; or

(2) engage in any other activity determined by the Governor to constitute a conflict of interest as specified in the State plan.

**(g) Sunshine provision**

The State board shall make available to the public, on a regular basis through open meetings, information regarding the activities of the State board, including information regarding the State plan prior to submission of the plan, information regarding membership, and, on request, minutes of formal meetings of the State board.

(Pub. L. 105-220, title I, §111, Aug. 7, 1998, 112 Stat. 945; Pub. L. 105-277, div. A, §101(f) [title VIII, §401(1)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-411.)

**REFERENCES IN TEXT**

This chapter, referred to in subsec. (d)(2), was in the original “this title” meaning title I of Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 939, as amended, which enacted this chapter, repealed sections 1501 to 1505, 1511 to 1583, 1592 to 1735, 1737 to 1791h, 1792 to 1792b, 2301 to 2314 of this title, section 211 of Title 40, Appendix, Public Buildings, Property, and Works, sections 11421, 11441 to 11447, 11449, 11450, 11461 to 11466, 11471, and 11472 of Title 42, The Public Health and Welfare, and sections 42101 to 42106 of Title 49, Transportation, enacted provisions set out as notes under sections 1501, 2301, and 2940 of this title and section 11421 of Title 42, and repealed provisions set out as notes under sections 801 and 2301 of this title and section 1255a of Title 8, Aliens and Nationality. For complete classification of title I to the Code, see Tables.

Section 2323(b)(14) of title 20, referred to in subsec. (d)(3), was omitted in the general amendment of chapter 44 (§2301 et seq.) of Title 20, Education, by Pub. L. 105-332, §1(b), Oct. 31, 1998, 112 Stat. 3076.

The Job Training Partnership Act, referred to in subsec. (e)(1)(B)(i), is Pub. L. 97-300, Oct. 13, 1982, 96 Stat. 1322, as amended. Title VII of the Act is classified generally to subchapter VI (§1792 et seq.) of chapter 19 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of this title and Tables.

This Act, referred to in subsec. (e)(2), is Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 936, as amended, known as the Workforce Investment Act of 1998. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

**AMENDMENTS**

1998—Subsec. (c). Pub. L. 105-277 substituted “Chairperson” for “Chairman” in heading.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 705, 2801, 2822 of this title; title 20 section 2341.

**§ 2822. State plan****(a) In general**

For a State to be eligible to receive an allotment under section 2852 or 2862 of this title, or to receive financial assistance under the Wagner-Peyser Act (29 U.S.C. 49 et seq.), the Governor of the State shall submit to the Secretary for consideration by the Secretary, a single State plan (referred to in this chapter as the “State plan”) that outlines a 5-year strategy for the statewide workforce investment system of the State and that meets the requirements of section 2821 of this title and this section.

**(b) Contents**

The State plan shall include—

(1) a description of the State board, including a description of the manner in which such board collaborated in the development of the State plan and a description of how the board will continue to collaborate in carrying out the functions described in section 2821(d) of this title;

(2) a description of State-imposed requirements for the statewide workforce investment system;

(3) a description of the State performance accountability system developed for the workforce investment activities to be carried out through the statewide workforce investment system, that includes information identifying State performance measures as described in section 2871(b)(3)(A)(ii) of this title;

(4) information describing—

(A) the needs of the State with regard to current and projected employment opportunities, by occupation;

(B) the job skills necessary to obtain such employment opportunities;

(C) the skills and economic development needs of the State; and

(D) the type and availability of workforce investment activities in the State;

(5) an identification of local areas designated in the State, including a description of the process used for the designation of such areas;

(6) an identification of criteria to be used by chief elected officials for the appointment of members of local boards based on the requirements of section 2832 of this title;

(7) the detailed plans required under section 8 of the Wagner-Peyser Act (29 U.S.C. 49g);

(8)(A) a description of the procedures that will be taken by the State to assure coordination of and avoid duplication among—

(i) workforce investment activities authorized under this chapter;

(ii) other activities authorized under this chapter;

(iii) programs authorized under the Wagner-Peyser Act (29 U.S.C. 49 et seq.), title II of this Act [20 U.S.C. 9201 et seq.], title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.), part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), and section 6(d)(4) of the Food Stamp Act of 1977 (7 U.S.C. 2015(d)(4)), activities authorized under title V of the Older Americans Act of 1965 (42 U.S.C. 3056 et seq.), and postsecondary vocational education activities authorized under

the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.);

(iv) work programs authorized under section 6(o) of the Food Stamp Act of 1977 (7 U.S.C. 2015(o));

(v) activities authorized under chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 et seq.);

(vi) activities authorized under chapter 41 of title 38;

(vii) employment and training activities carried out under the Community Services Block Grant Act (42 U.S.C. 9901 et seq.);

(viii) activities authorized under the National and Community Service Act of 1990 (42 U.S.C. 12501 et seq.);

(ix) employment and training activities carried out by the Department of Housing and Urban Development; and

(x) programs authorized under State unemployment compensation laws (in accordance with applicable Federal law); and

(B) a description of the common data collection and reporting processes used for the programs and activities described in subparagraph (A);

(9) a description of the process used by the State, consistent with section 2821(g) of this title, to provide an opportunity for public comment, including comment by representatives of businesses and representatives of labor organizations, and input into development of the plan, prior to submission of the plan;

(10) information identifying how the State will use funds the State receives under this subchapter to leverage other Federal, State, local, and private resources, in order to maximize the effectiveness of such resources, and to expand the participation of business, employees, and individuals in the statewide workforce investment system;

(11) assurances that the State will provide, in accordance with section 2934 of this title for fiscal control and fund accounting procedures that may be necessary to ensure the proper disbursement of, and accounting for, funds paid to the State through the allotments made under sections 2852 and 2862 of this title;

(12)(A) a description of the methods and factors the State will use in distributing funds to local areas for youth activities and adult employment and training activities under sections 2853(b)(3)(B) and 2863(b)(3)(B) of this title, including—

(i) a description of how the individuals and entities represented on the State board were involved in determining such methods and factors of distribution; and

(ii) a description of how the State consulted with chief elected officials in local areas throughout the State in determining such distribution;

(B) assurances that the funds will be distributed equitably throughout the State, and that no local areas will suffer significant shifts in funding from year to year; and

(C) a description of the formula prescribed by the Governor pursuant to section 2863(b)(2)(B) of this title for the allocation of

funds to local areas for dislocated worker employment and training activities;

(13) information specifying the actions that constitute a conflict of interest prohibited in the State for purposes of sections 2821(f) and 2832(g) of this title;

(14) with respect to the one-stop delivery systems described in section 2864(c) of this title (referred to individually in this chapter as a “one-stop delivery system”), a description of the strategy of the State for assisting local areas in development and implementation of fully operational one-stop delivery systems in the State;

(15) a description of the appeals process referred to in section 2831(a)(5) of this title;

(16) a description of the competitive process to be used by the State to award grants and contracts in the State for activities carried out under this chapter;

(17) with respect to the employment and training activities authorized in section 2864 of this title—

(A) a description of—

(i) the employment and training activities that will be carried out with the funds received by the State through the allotment made under section 2862 of this title;

(ii) how the State will provide rapid response activities to dislocated workers from funds reserved under section 2863(a)(2) of this title for such purposes, including the designation of an identifiable State rapid response dislocated worker unit to carry out statewide rapid response activities;

(iii) the procedures the local boards in the State will use to identify eligible providers of training services described in section 2864(d)(4) of this title (other than on-the-job training or customized training), as required under section 2842 of this title; and

(iv) how the State will serve the employment and training needs of dislocated workers (including displaced homemakers), low-income individuals (including recipients of public assistance), individuals training for nontraditional employment, and other individuals with multiple barriers to employment (including older individuals and individuals with disabilities); and

(B) an assurance that veterans will be afforded the employment and training activities by the State, to the extent practicable; and

(18) with respect to youth activities authorized in section 2854 of this title, information—

(A) describing the State strategy for providing comprehensive services to eligible youth, particularly those eligible youth who are recognized as having significant barriers to employment;

(B) identifying the criteria to be used by local boards in awarding grants for youth activities, including criteria that the Governor and local boards will use to identify effective and ineffective youth activities and providers of such activities;

(C) describing how the State will coordinate the youth activities carried out in the State under section 2854 of this title with the services provided by Job Corps centers in the State (where such centers exist); and

(D) describing how the State will coordinate youth activities described in subparagraph (C) with activities carried out through the youth opportunity grants under section 2914 of this title.

**(c) Plan submission and approval**

A State plan submitted to the Secretary under this section by a Governor shall be considered to be approved by the Secretary at the end of the 90-day period beginning on the day the Secretary receives the plan, unless the Secretary makes a written determination, during the 90-day period, that—

(1) the plan is inconsistent with the provisions of this chapter; or

(2) in the case of the portion of the plan described in section 8(a) of the Wagner-Peyser Act (29 U.S.C. 49g(a)), the portion does not satisfy the criteria for approval provided in section 8(d) of such Act.

**(d) Modifications to plan**

A State may submit modifications to a State plan in accordance with the requirements of this section and section 2821 of this title as necessary during the 5-year period covered by the plan.

(Pub. L. 105-220, title I, §112, Aug. 7, 1998, 112 Stat. 948; Pub. L. 105-277, div. A, §101(f) [title VIII, §401(2)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-411.)

REFERENCES IN TEXT

The Wagner-Peyser Act, referred to in subsecs. (a) and (b)(8)(A)(iii), is act June 6, 1933, ch. 49, 48 Stat. 113, as amended, which is classified generally to chapter 4B (§49 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 49 of this title and Tables.

Title II of this Act, referred to in subsec. (b)(8)(A)(iii), is title II of Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 1059, as amended, known as the Adult Education and Family Literacy Act, which is classified principally to subchapter I (§9201 et seq.) of chapter 73 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20 and Tables.

The Rehabilitation Act of 1973, referred to in subsec. (b)(8)(A)(iii), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, as amended. Title I of the Act is classified generally to subchapter I (§720 et seq.) of chapter 16 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 701 of this title and Tables.

The Social Security Act, referred to in subsec. (b)(8)(A)(iii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Act is classified generally to part A (§601 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Older Americans Act of 1965, referred to in subsec. (b)(8)(A)(iii), is Pub. L. 89-73, July 14, 1965, 79 Stat. 218, as amended. Title V of the Act, known as the “Older Americans Community Services Employment Act”, is classified generally to subchapter IX (§3056 et seq.) of chapter 35 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of Title 42 and Tables.

The Carl D. Perkins Vocational and Applied Technology Education Act, referred to in subsec. (b)(8)(A)(iii), is Pub. L. 88-210, Dec. 18, 1963, 77 Stat. 403, as amended, which was classified generally to chapter 44 (§2301 et seq.) of Title 20, Education, prior to being amended generally and renamed the Carl D. Perkins Vocational and Technical Education Act of 1998 by Pub. L. 105-332, §1(b), Oct. 31, 1998, 112 Stat. 3076. For complete classification of Pub. L. 88-210 to the Code, see Short Title note set out under section 2301 of Title 20 and Tables.

The Trade Act of 1974, referred to in subsec. (b)(8)(A)(v), is Pub. L. 93-618, Jan. 3, 1975, 88 Stat. 1978, as amended. Chapter 2 of title II of the Act is classified generally to part 2 (§2271 et seq.) of subchapter II of chapter 12 of Title 19, Customs Duties. For complete classification of this Act to the Code, see section 2101 of Title 19 and Tables.

The Community Services Block Grant Act, referred to in subsec. (b)(8)(A)(vii), is subtitle B (§§671-683) of title VI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 511, as amended, which is classified generally to chapter 106 (§9901 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 9901 of Title 42 and Tables.

The National and Community Service Act of 1990, referred to in subsec. (b)(8)(A)(viii), is Pub. L. 101-610, Nov. 16, 1990, 104 Stat. 3127, as amended, which is classified principally to chapter 129 (§12501 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of Title 42 and Tables.

AMENDMENTS

1998—Subsec. (c)(1). Pub. L. 105-277 substituted “; or” for “; and”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 49g, 721, 2821, 2831, 2851, 2861, 2871, 2944 of this title; title 19 section 2311; title 20 section 2342; title 38 section 4110B; title 42 section 3056.

PART B—LOCAL PROVISIONS

**§ 2831. Local workforce investment areas**

**(a) Designation of areas**

**(1) In general**

**(A) Process**

Except as provided in subsection (b) of this section, and consistent with paragraphs (2), (3), and (4), in order for a State to receive an allotment under section 2852 or 2862 of this title, the Governor of the State shall designate local workforce investment areas within the State—

(i) through consultation with the State board; and

(ii) after consultation with chief elected officials and after consideration of comments received through the public comment process as described in section 2822(b)(9) of this title.

**(B) Considerations**

In making the designation of local areas, the Governor shall take into consideration the following:

(i) Geographic areas served by local educational agencies and intermediate educational agencies.

(ii) Geographic areas served by post-secondary educational institutions and area vocational education schools.

(iii) The extent to which such local areas are consistent with labor market areas.

(iv) The distance that individuals will need to travel to receive services provided in such local areas.

(v) The resources of such local areas that are available to effectively administer the activities carried out under this subchapter.

## **(2) Automatic designation**

The Governor shall approve any request for designation as a local area—

(A) from any unit of general local government with a population of 500,000 or more;

(B) of the area served by a rural concentrated employment program grant recipient of demonstrated effectiveness that served as a service delivery area or substate area under the Job Training Partnership Act [29 U.S.C. 1501 et seq.], if the grant recipient has submitted the request; and

(C) of an area that served as a service delivery area under section 101(a)(4)(A)(ii) of the Job Training Partnership Act [29 U.S.C. 1511(a)(4)(A)(ii)] (as in effect on the day before August 7, 1998) in a State that has a population of not more than 1,100,000 and a population density greater than 900 persons per square mile.

## **(3) Temporary and subsequent designation**

### **(A) Criteria**

Notwithstanding paragraph (2)(A), the Governor shall approve any request, made not later than the date of submission of the initial State plan under this subchapter, for temporary designation as a local area from any unit of general local government (including a combination of such units) with a population of 200,000 or more that was a service delivery area under the Job Training Partnership Act [29 U.S.C. 1501 et seq.] on the day before August 7, 1998, if the Governor determines that the area—

(i) performed successfully, in each of the last 2 years prior to the request for which data are available, in the delivery of services to participants under part A of title II and title III of the Job Training Partnership Act [29 U.S.C. 1601 et seq., 1651 et seq.] (as in effect on such day); and

(ii) has sustained the fiscal integrity of the funds used by the area to carry out activities under such part and title.

### **(B) Duration and subsequent designation**

A temporary designation under this paragraph shall be for a period of not more than 2 years, after which the designation shall be extended until the end of the period covered by the State plan if the Governor determines that, during the temporary designation period, the area substantially met (as defined by the State board) the local performance measures for the local area and sustained the fiscal integrity of the funds used by the area to carry out activities under this subchapter.

### **(C) Technical assistance**

The Secretary shall provide the States with technical assistance in making the de-

terminations required by this paragraph. The Secretary shall not issue regulations governing determinations to be made under this paragraph.

### **(D) Performed successfully**

In this paragraph, the term “performed successfully” means that the area involved met or exceeded the performance standards for activities administered in the area that—

(i) are established by the Secretary for each year and modified by the adjustment methodology of the State (used to account for differences in economic conditions, participant characteristics, and combination of services provided from the combination assumed for purposes of the established standards of the Secretary); and

(ii)(I) if the area was designated as both a service delivery area and a substate area under the Job Training Partnership Act [29 U.S.C. 1501 et seq.] (as in effect on the day before August 7, 1998)—

(aa) relate to job retention and earnings, with respect to activities carried out under part A of title II of such Act [29 U.S.C. 1601 et seq.] (as in effect on such day); and

(bb) relate to entry into employment, with respect to activities carried out under title III of such Act [29 U.S.C. 1651 et seq.] (as in effect on such day);

(II) if the area was designated only as a service delivery area under such Act (as in effect on such day), relate to the standards described in subclause (I)(aa); or

(III) if the area was only designated as a substate area under such Act (as in effect on such day), relate to the standards described in subclause (I)(bb).

### **(E) Sustained the fiscal integrity**

In this paragraph, the term “sustained the fiscal integrity”, used with respect to funds used by a service delivery area or local area, means that the Secretary has not made a final determination during any of the last 3 years for which data are available, prior to the date of the designation request involved, that either the grant recipient or the administrative entity of the area misexpended the funds due to willful disregard of the requirements of the Act involved, gross negligence, or failure to observe accepted standards of administration.

## **(4) Designation on recommendation of State board**

The Governor may approve a request from any unit of general local government (including a combination of such units) for designation (including temporary designation) as a local area if the State board determines, taking into account the factors described in clauses (i) through (v) of paragraph (1)(B), and recommends to the Governor, that such area should be so designated.

## **(5) Appeals**

A unit of general local government (including a combination of such units) or grant recipient that requests but is not granted des-

ignation of an area as a local area under paragraph (2) or (3) may submit an appeal to the State board under an appeal process established in the State plan. If the appeal does not result in such a designation, the Secretary, after receiving a request for review from the unit or grant recipient and on determining that the unit or grant recipient was not accorded procedural rights under the appeal process established in the State plan or that the area meets the requirements of paragraph (2) or (3), as appropriate, may require that the area be designated as a local area under such paragraph.

**(b) Small States**

The Governor of any State that was a single State service delivery area under the Job Training Partnership Act [29 U.S.C. 1501 et seq.] as of July 1, 1998, may designate the State as a single State local area for the purposes of this chapter. In the case of such a designation, the Governor shall identify the State as a local area under section 2822(b)(5) of this title.

**(c) Regional planning and cooperation**

**(1) Planning**

As part of the process for developing the State plan, a State may require regional planning by local boards for a designated region in the State. The State may require the local boards for a designated region to participate in a regional planning process that results in the establishment of regional performance measures for workforce investment activities authorized under this subchapter. The State may award regional incentive grants to the designated regions that meet or exceed the regional performance measures.

**(2) Information sharing**

The State may require the local boards for a designated region to share, in feasible cases, employment statistics, information about employment opportunities and trends, and other types of information that would assist in improving the performance of all local areas in the designated region on local performance measures.

**(3) Coordination of services**

The State may require the local boards for a designated region to coordinate the provision of workforce investment activities authorized under this subchapter, including the provision of transportation and other supportive services, so that services provided through the activities may be provided across the boundaries of local areas within the designated region.

**(4) Interstate regions**

Two or more States that contain an interstate region that is a labor market area, economic development region, or other appropriate contiguous subarea of the States may designate the area as a designated region for purposes of this subsection, and jointly exercise the State functions described in paragraphs (1) through (3).

**(5) Definitions**

In this subsection:

**(A) Designated region**

The term “designated region” means a combination of local areas that are partly or completely in a single labor market area, economic development region, or other appropriate contiguous subarea of a State, that is designated by the State, except as provided in paragraph (4).

**(B) Local board for a designated region**

The term “local board for a designated region” means a local board for a local area in a designated region.

(Pub. L. 105-220, title I, §116, Aug. 7, 1998, 112 Stat. 951; Pub. L. 105-277, div. A, §101(f) [title VIII, §401(3)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-411.)

REFERENCES IN TEXT

The Job Training Partnership Act, referred to in subsecs. (a)(2)(B), (3) and (b), is Pub. L. 97-300, Oct. 13, 1982, 96 Stat. 1322, as amended, which is classified generally to chapter 19 (§1501 et seq.) of this title. Part A of title II and title III of the Act are classified generally to part A (§1601 et seq.) of subchapter II and subchapter III (§1651 et seq.), respectively, of chapter 19 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of this title and Tables.

This chapter, referred to in subsec. (b), was in the original “this title” meaning title I of Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 939, as amended, which enacted this chapter, repealed sections 1501 to 1505, 1511 to 1583, 1592 to 1735, 1737 to 1791h, 1792 to 1792b, 2301 to 2314 of this title, section 211 of Title 40, Appendix, Public Buildings, Property, and Works, sections 11421, 11441 to 11447, 11449, 11450, 11461 to 11466, 11471, and 11472 of Title 42, The Public Health and Welfare, and sections 42101 to 42106 of Title 49, Transportation, enacted provisions set out as notes under sections 1501, 2301, and 2940 of this title and section 11421 of Title 42, and repealed provisions set out as notes under sections 801 and 2301 of this title and section 1255a of Title 8, Aliens and Nationality. For complete classification of title I to the Code, see Tables.

AMENDMENTS

1998—Subsec. (a)(3)(D)(ii)(I)(aa). Pub. L. 105-277 substituted “; and” for “; or”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2801, 2821, 2822, 2832, 2852, 2853, 2862, 2863, 2864, 2939 of this title.

**§ 2832. Local workforce investment boards**

**(a) Establishment**

There shall be established in each local area of a State, and certified by the Governor of the State, a local workforce investment board, to set policy for the portion of the statewide workforce investment system within the local area (referred to in this chapter as a “local workforce investment system”).

**(b) Membership**

**(1) State criteria**

The Governor of the State, in partnership with the State board, shall establish criteria for use by chief elected officials in the local areas for appointment of members of the local boards in such local areas in accordance with the requirements of paragraph (2).

**(2) Composition**

Such criteria shall require, at a minimum, that the membership of each local board—

(A) shall include—

(i) representatives of business in the local area, who—

(I) are owners of businesses, chief executives or operating officers of businesses, and other business executives or employers with optimum policymaking or hiring authority;

(II) represent businesses with employment opportunities that reflect the employment opportunities of the local area; and

(III) are appointed from among individuals nominated by local business organizations and business trade associations;

(ii) representatives of local educational entities, including representatives of local educational agencies, local school boards, entities providing adult education and literacy activities, and postsecondary educational institutions (including representatives of community colleges, where such entities exist), selected from among individuals nominated by regional or local educational agencies, institutions, or organizations representing such local educational entities;

(iii) representatives of labor organizations (for a local area in which employees are represented by labor organizations), nominated by local labor federations, or (for a local area in which no employees are represented by such organizations), other representatives of employees;

(iv) representatives of community-based organizations (including organizations representing individuals with disabilities and veterans, for a local area in which such organizations are present);

(v) representatives of economic development agencies, including private sector economic development entities; and

(vi) representatives of each of the one-stop partners; and

(B) may include such other individuals or representatives of entities as the chief elected official in the local area may determine to be appropriate.

### **(3) Authority of board members**

Members of the board that represent organizations, agencies, or other entities shall be individuals with optimum policymaking authority within the organizations, agencies, or entities.

### **(4) Majority**

A majority of the members of the local board shall be representatives described in paragraph (2)(A)(i).

### **(5) Chairperson**

The local board shall elect a chairperson for the local board from among the representatives described in paragraph (2)(A)(i).

## **(c) Appointment and certification of board**

### **(1) Appointment of board members and assignment of responsibilities**

#### **(A) In general**

The chief elected official in a local area is authorized to appoint the members of the

local board for such area, in accordance with the State criteria established under subsection (b) of this section.

### **(B) Multiple units of local government in area**

#### **(i) In general**

In a case in which a local area includes more than 1 unit of general local government, the chief elected officials of such units may execute an agreement that specifies the respective roles of the individual chief elected officials—

(I) in the appointment of the members of the local board from the individuals nominated or recommended to be such members in accordance with the criteria established under subsection (b) of this section; and

(II) in carrying out any other responsibilities assigned to such officials under this subchapter.

#### **(ii) Lack of agreement**

If, after a reasonable effort, the chief elected officials are unable to reach agreement as provided under clause (i), the Governor may appoint the members of the local board from individuals so nominated or recommended.

### **(C) Concentrated employment programs**

In the case of a local area designated in accordance with section 2831(a)(2)(B) of this title, the governing body of the concentrated employment program involved shall act in consultation with the chief elected official in the local area to appoint members of the local board, in accordance with the State criteria established under subsection (b) of this section, and to carry out any other responsibility relating to workforce investment activities assigned to such official under this Act.

## **(2) Certification**

### **(A) In general**

The Governor shall, once every 2 years, certify 1 local board for each local area in the State.

### **(B) Criteria**

Such certification shall be based on criteria established under subsection (b) of this section and, for a second or subsequent certification, the extent to which the local board has ensured that workforce investment activities carried out in the local area have enabled the local area to meet the local performance measures.

### **(C) Failure to achieve certification**

Failure of a local board to achieve certification shall result in reappointment and certification of another local board for the local area pursuant to the process described in paragraph (1) and this paragraph.

## **(3) Decertification**

### **(A) Fraud, abuse, failure to carry out functions**

Notwithstanding paragraph (2), the Governor may decertify a local board, at any

time after providing notice and an opportunity for comment, for—

- (i) fraud or abuse; or
- (ii) failure to carry out the functions specified for the local board in any of paragraphs (1) through (7) of subsection (d) of this section.

**(B) Nonperformance**

Notwithstanding paragraph (2), the Governor may decertify a local board if a local area fails to meet the local performance measures for such local area for 2 consecutive program years (in accordance with section 2871(h) of this title).

**(C) Plan**

If the Governor decertifies a local board for a local area under subparagraph (A) or (B), the Governor may require that a new local board be appointed and certified for the local area pursuant to a reorganization plan developed by the Governor, in consultation with the chief elected official in the local area, and in accordance with the criteria established under subsection (b) of this section.

**(4) Single State area**

Notwithstanding subsection (b) of this section and paragraphs (1) and (2), if a State described in section 2831(b) of this title indicates in the State plan that the State will be treated as a local area for purposes of the application of this chapter, the Governor may designate the State board to carry out any of the functions described in subsection (d) of this section.

**(d) Functions of local board**

The functions of the local board shall include the following:

**(1) Local plan**

Consistent with section 2833 of this title, each local board, in partnership with the chief elected official for the local area involved, shall develop and submit a local plan to the Governor.

**(2) Selection of operators and providers**

**(A) Selection of one-stop operators**

Consistent with section 2841(d) of this title, the local board, with the agreement of the chief elected official—

- (i) shall designate or certify one-stop operators as described in section 2841(d)(2)(A) of this title; and
- (ii) may terminate for cause the eligibility of such operators.

**(B) Selection of youth providers**

Consistent with section 2843 of this title, the local board shall identify eligible providers of youth activities in the local area by awarding grants or contracts on a competitive basis, based on the recommendations of the youth council.

**(C) Identification of eligible providers of training services**

Consistent with section 2842 of this title, the local board shall identify eligible provid-

ers of training services described in section 2864(d)(4) of this title in the local area.

**(D) Identification of eligible providers of intensive services**

If the one-stop operator does not provide intensive services in a local area, the local board shall identify eligible providers of intensive services described in section 2864(d)(3) of this title in the local area by awarding contracts.

**(3) Budget and administration**

**(A) Budget**

The local board shall develop a budget for the purpose of carrying out the duties of the local board under this section, subject to the approval of the chief elected official.

**(B) Administration**

**(i) Grant recipient**

**(I) In general**

The chief elected official in a local area shall serve as the local grant recipient for, and shall be liable for any misuse of, the grant funds allocated to the local area under sections 2853 and 2863 of this title, unless the chief elected official reaches an agreement with the Governor for the Governor to act as the local grant recipient and bear such liability.

**(II) Designation**

In order to assist in the administration of the grant funds, the chief elected official or the Governor, where the Governor serves as the local grant recipient for a local area, may designate an entity to serve as a local grant subrecipient for such funds or as a local fiscal agent. Such designation shall not relieve the chief elected official or the Governor of the liability for any misuse of grant funds as described in subclause (I).

**(III) Disbursal**

The local grant recipient or an entity designated under subclause (II) shall disburse such funds for workforce investment activities at the direction of the local board, pursuant to the requirements of this chapter, if the direction does not violate a provision of this Act. The local grant recipient or entity designated under subclause (II) shall disburse the funds immediately on receiving such direction from the local board.

**(ii) Staff**

The local board may employ staff.

**(iii) Grants and donations**

The local board may solicit and accept grants and donations from sources other than Federal funds made available under this Act.

**(4) Program oversight**

The local board, in partnership with the chief elected official, shall conduct oversight with respect to local programs of youth activities authorized under section 2854 of this title, local employment and training activities au-

thorized under section 2864 of this title, and the one-stop delivery system in the local area.

**(5) Negotiation of local performance measures**

The local board, the chief elected official, and the Governor shall negotiate and reach agreement on local performance measures as described in section 2871(c) of this title.

**(6) Employment statistics system**

The local board shall assist the Governor in developing the statewide employment statistics system described in section 491-2(e) of this title.

**(7) Employer linkages**

The local board shall coordinate the workforce investment activities authorized under this subchapter and carried out in the local area with economic development strategies and develop other employer linkages with such activities.

**(8) Connecting, brokering, and coaching**

The local board shall promote the participation of private sector employers in the statewide workforce investment system and ensure the effective provision, through the system, of connecting, brokering, and coaching activities, through intermediaries such as the one-stop operator in the local area or through other organizations, to assist such employers in meeting hiring needs.

**(e) Sunshine provision**

The local board shall make available to the public, on a regular basis through open meetings, information regarding the activities of the local board, including information regarding the local plan prior to submission of the plan, and regarding membership, the designation and certification of one-stop operators, and the award of grants or contracts to eligible providers of youth activities, and on request, minutes of formal meetings of the local board.

**(f) Limitations**

**(1) Training services**

**(A) In general**

Except as provided in subparagraph (B), no local board may provide training services described in section 2864(d)(4) of this title.

**(B) Waivers of training prohibition**

The Governor of the State in which a local board is located may, pursuant to a request from the local board, grant a written waiver of the prohibition set forth in subparagraph (A) (relating to the provision of training services) for a program of training services, if the local board—

(i) submits to the Governor a proposed request for the waiver that includes—

(I) satisfactory evidence that there is an insufficient number of eligible providers of such a program of training services to meet local demand in the local area;

(II) information demonstrating that the board meets the requirements for an eligible provider of training services under section 2842 of this title; and

(III) information demonstrating that the program of training services pre-

pares participants for an occupation that is in demand in the local area;

(ii) makes the proposed request available to eligible providers of training services and other interested members of the public for a public comment period of not less than 30 days; and

(iii) includes, in the final request for the waiver, the evidence and information described in clause (i) and the comments received pursuant to clause (ii).

**(C) Duration**

A waiver granted to a local board under subparagraph (B) shall apply for a period of not to exceed 1 year. The waiver may be renewed for additional periods of not to exceed 1 year, pursuant to requests from the local board, if the board meets the requirements of subparagraph (B) in making the requests.

**(D) Revocation**

The Governor may revoke a waiver granted under this paragraph during the appropriate period described in subparagraph (C) if the Governor determines that the local board involved has engaged in a pattern of inappropriate referrals to training services operated by the local board.

**(2) Core services; intensive services; designation or certification as one-stop operators**

A local board may provide core services described in section 2864(d)(2) of this title or intensive services described in section 2864(d)(3) of this title through a one-stop delivery system described in section 2864(c) of this title or be designated or certified as a one-stop operator only with the agreement of the chief elected official and the Governor.

**(3) Limitation on authority**

Nothing in this Act shall be construed to provide a local board with the authority to mandate curricula for schools.

**(g) Conflict of interest**

A member of a local board may not—

(1) vote on a matter under consideration by the local board—

(A) regarding the provision of services by such member (or by an entity that such member represents); or

(B) that would provide direct financial benefit to such member or the immediate family of such member; or

(2) engage in any other activity determined by the Governor to constitute a conflict of interest as specified in the State plan.

**(h) Youth council**

**(1) Establishment**

There shall be established, as a subgroup within each local board, a youth council appointed by the local board, in cooperation with the chief elected official for the local area.

**(2) Membership**

The membership of each youth council—

(A) shall include—

(i) members of the local board described in subparagraph (A) or (B) of subsection



(b)(2) of this section with special interest or expertise in youth policy;

(ii) representatives of youth service agencies, including juvenile justice and local law enforcement agencies;

(iii) representatives of local public housing authorities;

(iv) parents of eligible youth seeking assistance under this subchapter;

(v) individuals, including former participants, and representatives of organizations, that have experience relating to youth activities; and

(vi) representatives of the Job Corps, as appropriate; and

(B) may include such other individuals as the chairperson of the local board, in cooperation with the chief elected official, determines to be appropriate.

### (3) Relationship to local board

Members of the youth council who are not members of the local board described in subparagraphs (A) and (B) of subsection (b)(2) of this section shall be voting members of the youth council and nonvoting members of the board.

### (4) Duties

The duties of the youth council include—

(A) developing the portions of the local plan relating to eligible youth, as determined by the chairperson of the local board;

(B) subject to the approval of the local board and consistent with section 2843 of this title—

(i) recommending eligible providers of youth activities, to be awarded grants or contracts on a competitive basis by the local board to carry out the youth activities; and

(ii) conducting oversight with respect to the eligible providers of youth activities, in the local area;

(C) coordinating youth activities authorized under section 2854 of this title in the local area; and

(D) other duties determined to be appropriate by the chairperson of the local board.

### (i) Alternative entity

#### (1) In general

For purposes of complying with subsections (a), (b), and (c) of this section, and paragraphs (1) and (2) of subsection (h) of this section, a State may use any local entity (including a local council, regional workforce development board, or similar entity) that—

(A) is established to serve the local area (or the service delivery area that most closely corresponds to the local area);

(B) is in existence on December 31, 1997;

(C)(i) is established pursuant to section 1512 of this title, as in effect on December 31, 1997; or

(ii) is substantially similar to the local board described in subsections (a), (b), and (c) of this section, and paragraphs (1) and (2) of subsection (h) of this section; and

(D) includes—

(i) representatives of business in the local area; and

(ii)(I) representatives of labor organizations (for a local area in which employees are represented by labor organizations), nominated by local labor federations; or

(II) other representatives of employees in the local area (for a local area in which no employees are represented by such organizations).

### (2) References

References in this Act to a local board or a youth council shall be considered to include such an entity or a subgroup of such an entity, respectively.

(Pub. L. 105-220, title I, §117, Aug. 7, 1998, 112 Stat. 954; Pub. L. 105-277, div. A, §101(f) [title VIII, §401(4)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-411.)

#### REFERENCES IN TEXT

This Act, referred to in subsecs. (c)(1)(C), (d)(3)(B)(i)(III), (iii), (f)(3), and (i)(2), is Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 936, as amended, known as the Workforce Investment Act of 1998. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

#### AMENDMENTS

1998—Subsec. (f)(1)(D). Pub. L. 105-277, §101(f) [title VIII, §401(4)(A)], substituted “if the Governor” for “if the State”.

Subsec. (i)(1)(D)(ii)(II). Pub. L. 105-277, §101(f) [title VIII, §401(4)(B)], added subcl. (II) and struck out former subcl. (II) which read as follows: “(for a local area in which no employees are represented by such organizations), other representatives of employees in the local area.”

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 49a, 705, 2801, 2821, 2822, 2833, 2871 of this title; title 42 section 4953.

### § 2833. Local plan

#### (a) In general

Each local board shall develop and submit to the Governor a comprehensive 5-year local plan (referred to in this chapter as the “local plan”), in partnership with the appropriate chief elected official. The plan shall be consistent with the State plan.

#### (b) Contents

The local plan shall include—

(1) an identification of—

(A) the workforce investment needs of businesses, jobseekers, and workers in the local area;

(B) the current and projected employment opportunities in the local area; and

(C) the job skills necessary to obtain such employment opportunities;

(2) a description of the one-stop delivery system to be established or designated in the local area, including—

(A) a description of how the local board will ensure the continuous improvement of eligible providers of services through the system and ensure that such providers meet the employment needs of local employers and participants; and

(B) a copy of each memorandum of understanding described in section 2841(c) of this

title (between the local board and each of the one-stop partners) concerning the operation of the one-stop delivery system in the local area;

(3) a description of the local levels of performance negotiated with the Governor and chief elected official pursuant to section 2871(c) of this title, to be used to measure the performance of the local area and to be used by the local board for measuring the performance of the local fiscal agent (where appropriate), eligible providers, and the one-stop delivery system, in the local area;

(4) a description and assessment of the type and availability of adult and dislocated worker employment and training activities in the local area;

(5) a description of how the local board will coordinate workforce investment activities carried out in the local area with statewide rapid response activities, as appropriate;

(6) a description and assessment of the type and availability of youth activities in the local area, including an identification of successful providers of such activities;

(7) a description of the process used by the local board, consistent with subsection (c) of this section, to provide an opportunity for public comment, including comment by representatives of businesses and comment by representatives of labor organizations, and input into the development of the local plan, prior to submission of the plan;

(8) an identification of the entity responsible for the disbursement of grant funds described in section 2832(d)(3)(B)(i)(III) of this title, as determined by the chief elected official or the Governor under section 2832(d)(3)(B)(i) of this title;

(9) a description of the competitive process to be used to award the grants and contracts in the local area for activities carried out under this subchapter; and

(10) such other information as the Governor may require.

### (c) Process

Prior to the date on which the local board submits a local plan under this section, the local board shall—

(1) make available copies of a proposed local plan to the public through such means as public hearings and local news media;

(2) allow members of the local board and members of the public, including representatives of business and representatives of labor organizations, to submit comments on the proposed local plan to the local board, not later than the end of the 30-day period beginning on the date on which the proposed local plan is made available; and

(3) include with the local plan submitted to the Governor under this section any such comments that represent disagreement with the plan.

### (d) Plan submission and approval

A local plan submitted to the Governor under this section shall be considered to be approved by the Governor at the end of the 90-day period beginning on the day the Governor receives the

plan, unless the Governor makes a written determination during the 90-day period that—

(1) deficiencies in activities carried out under this subchapter have been identified, through audits conducted under section 2934 of this title or otherwise, and the local area has not made acceptable progress in implementing corrective measures to address the deficiencies; or

(2) the plan does not comply with this chapter.

(Pub. L. 105-220, title I, §118, Aug. 7, 1998, 112 Stat. 961.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 795, 2832, 2945 of this title.

### PART C—WORKFORCE INVESTMENT ACTIVITIES PROVIDERS

#### § 2841. Establishment of one-stop delivery systems

##### (a) In general

Consistent with the State plan, the local board for a local area, with the agreement of the chief elected official for the local area, shall—

(1) develop and enter into the memorandum of understanding described in subsection (c) of this section with one-stop partners;

(2) designate or certify one-stop operators under subsection (d) of this section; and

(3) conduct oversight with respect to the one-stop delivery system in the local area.

##### (b) One-stop partners

###### (1) Required partners

###### (A) In general

Each entity that carries out a program or activities described in subparagraph (B) shall—

(i) make available to participants, through a one-stop delivery system, the services described in section 2864(d)(2) of this title that are applicable to such program or activities; and

(ii) participate in the operation of such system consistent with the terms of the memorandum described in subsection (c) of this section, and with the requirements of the Federal law in which the program or activities are authorized.

###### (B) Programs and activities

The programs and activities referred to in subparagraph (A) consist of—

(i) programs authorized under this chapter;

(ii) programs authorized under the Wagner-Peyser Act (29 U.S.C. 49 et seq.);

(iii) adult education and literacy activities authorized under title II [20 U.S.C. 9201 et seq.];

(iv) programs authorized under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.) (other than part C of title I of such Act [29 U.S.C. 741] and subject to subsection (f) of this section);

(v) programs authorized under section 403(a)(5) of the Social Security Act (42

U.S.C. 603(a)(5)) (as added by section 5001 of the Balanced Budget Act of 1997);

(vi) activities authorized under title V of the Older Americans Act of 1965 (42 U.S.C. 3056 et seq.);

(vii) postsecondary vocational education activities authorized under the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.);

(viii) activities authorized under chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 et seq.);

(ix) activities authorized under chapter 41 of title 38;

(x) employment and training activities carried out under the Community Services Block Grant Act (42 U.S.C. 9901 et seq.);

(xi) employment and training activities carried out by the Department of Housing and Urban Development; and

(xii) programs authorized under State unemployment compensation laws (in accordance with applicable Federal law).

## **(2) Additional partners**

### **(A) In general**

In addition to the entities described in paragraph (1), other entities that carry out a human resource program described in subparagraph (B) may—

(i) make available to participants, through the one-stop delivery system, the services described in section 2864(d)(2) of this title that are applicable to such program; and

(ii) participate in the operation of such system consistent with the terms of the memorandum described in subsection (c) of this section, and with the requirements of the Federal law in which the program is authorized;

if the local board and chief elected official involved approve such participation.

### **(B) Programs**

The programs referred to in subparagraph (A) may include—

(i) programs authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.);

(ii) programs authorized under section 2015(d)(4) of title 7;

(iii) work programs authorized under section 2015(o) of title 7;

(iv) programs authorized under the National and Community Service Act of 1990 (42 U.S.C. 12501 et seq.); and

(v) other appropriate Federal, State, or local programs, including programs in the private sector.

## **(c) Memorandum of understanding**

### **(1) Development**

The local board, with the agreement of the chief elected official, shall develop and enter into a memorandum of understanding (between the local board and the one-stop partners), consistent with paragraph (2), concerning the operation of the one-stop delivery system in the local area.

## **(2) Contents**

Each memorandum of understanding shall contain—

(A) provisions describing—

(i) the services to be provided through the one-stop delivery system;

(ii) how the costs of such services and the operating costs of the system will be funded;

(iii) methods for referral of individuals between the one-stop operator and the one-stop partners, for the appropriate services and activities; and

(iv) the duration of the memorandum and the procedures for amending the memorandum during the term of the memorandum; and

(B) such other provisions, consistent with the requirements of this chapter, as the parties to the agreement determine to be appropriate.

## **(d) One-stop operators**

### **(1) Designation and certification**

Consistent with paragraphs (2) and (3), the local board, with the agreement of the chief elected official, is authorized to designate or certify one-stop operators and to terminate for cause the eligibility of such operators.

### **(2) Eligibility**

To be eligible to receive funds made available under this subchapter to operate a one-stop center referred to in section 2864(c) of this title, an entity (which may be a consortium of entities)—

(A) shall be designated or certified as a one-stop operator—

(i) through a competitive process; or

(ii) in accordance with an agreement reached between the local board and a consortium of entities that, at a minimum, includes 3 or more of the one-stop partners described in subsection (b)(1) of this section; and

(B) may be a public or private entity, or consortium of entities, of demonstrated effectiveness, located in the local area, which may include—

(i) a postsecondary educational institution;

(ii) an employment service agency established under the Wagner-Peyser Act (29 U.S.C. 49 et seq.), on behalf of the local office of the agency;

(iii) a private, nonprofit organization (including a community-based organization);

(iv) a private for-profit entity;

(v) a government agency; and

(vi) another interested organization or entity, which may include a local chamber of commerce or other business organization.

### **(3) Exception**

Elementary schools and secondary schools shall not be eligible for designation or certification as one-stop operators, except that non-traditional public secondary schools and area

vocational education schools shall be eligible for such designation or certification.

**(e) Established one-stop delivery system**

If a one-stop delivery system has been established in a local area prior to August 7, 1998, the local board, the chief elected official, and the Governor involved may agree to certify an entity carrying out activities through the system as a one-stop operator for purposes of subsection (d) of this section, consistent with the requirements of subsection (b) of this section, of the memorandum of understanding, and of section 2864(c) of this title.

**(f) Application to certain vocational rehabilitation programs**

**(1) Limitation**

Nothing in this section shall be construed to apply to part C of title I of the Rehabilitation Act of 1973 (29 U.S.C. 741).

**(2) Client assistance**

Nothing in this Act shall be construed to require that any entity carrying out a client assistance program authorized under section 112 of the Rehabilitation Act of 1973 (29 U.S.C. 732)—

(A) violate the requirement of section 112(c)(1)(A) of that Act that the entity be independent of any agency which provides treatment, services, or rehabilitation to individuals under that Act [29 U.S.C. 701 et seq.]; or

(B) carry out any activity not authorized under section 112 of that Act (including appropriate Federal regulations).

(Pub. L. 105-220, title I, §121, Aug. 7, 1998, 112 Stat. 963; Pub. L. 105-332, §5(a), Oct. 31, 1998, 112 Stat. 3127.)

REFERENCES IN TEXT

This chapter, referred to in subsections. (b)(1)(B)(i) and (c)(2)(B), was in the original “this title” meaning title I of Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 939, as amended, which enacted this chapter, repealed sections 1501 to 1505, 1511 to 1583, 1592 to 1735, 1737 to 1791h, 1792 to 1792b, 2301 to 2314 of this title, section 211 of Title 40, Appendix, Public Buildings, Property, and Works, sections 11421, 11441 to 11447, 11449, 11450, 11461 to 11466, 11471, and 11472 of Title 42, The Public Health and Welfare, and sections 42101 to 42106 of Title 49, Transportation, enacted provisions set out as notes under sections 1501, 2301, and 2940 of this title and section 11421 of Title 42, and repealed provisions set out as notes under sections 801 and 2301 of this title and section 1255a of Title 8, Aliens and Nationality. For complete classification of title I to the Code, see Tables.

The Wagner-Peyser Act, referred to in subsections. (b)(1)(B)(ii) and (d)(2)(B)(ii), is act June 6, 1933, ch. 49, 48 Stat. 113, as amended, which is classified generally to chapter 4B (§49 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 49 of this title and Tables.

Title II, referred to in subsection. (b)(1)(B)(iii), is title II of Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 1059, as amended, known as the Adult Education and Family Literacy Act, which is classified principally to subchapter I (§9201 et seq.) of chapter 73 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20 and Tables.

The Rehabilitation Act of 1973, referred to in subsections. (b)(1)(B)(iv) and (f), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified generally to

chapter 16 (§701 et seq.) of this title. Title I of the Act is classified generally to subchapter I (§720 et seq.) of chapter 16 of this title. Part C of title I of the Act is classified generally to part C (§741) of subchapter I of chapter 16 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 701 of this title and Tables.

The Older Americans Act of 1965, referred to in subsection. (b)(1)(B)(vi), is Pub. L. 89-73, July 14, 1965, 79 Stat. 218, as amended. Title V of the Act, known as the “Older Americans Community Services Employment Act”, is classified generally to subchapter IX (§3056 et seq.) of chapter 35 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of Title 42 and Tables.

The Carl D. Perkins Vocational and Applied Technology Education Act, referred to in subsection. (b)(1)(B)(vii), is Pub. L. 88-210, Dec. 18, 1963, 77 Stat. 403, as amended, which was classified generally to chapter 44 (§2301 et seq.) of Title 20, Education, prior to being amended generally and renamed the Carl D. Perkins Vocational and Technical Education Act of 1998 by Pub. L. 105-332, §1(b), Oct. 31, 1998, 112 Stat. 3076. For complete classification of Pub. L. 88-210 to the Code, see Short Title note set out under section 2301 of Title 20 and Tables.

The Trade Act of 1974, referred to in subsection. (b)(1)(B)(viii), is Pub. L. 93-618, Jan. 3, 1975, 88 Stat. 1978, as amended. Chapter 2 of title II of the Act is classified principally to part 2 (§2271 et seq.) of subchapter II of chapter 12 of Title 19, Customs Duties. For complete classification of this Act to the Code, see References in Text note set out under section 2101 of Title 19 and Tables.

The Community Services Block Grant Act, referred to in subsection. (b)(1)(B)(x), is subtitle B (§§671-683) of title VI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 511, as amended, which is classified generally to chapter 106 (§9901 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 9901 of Title 42 and Tables.

The Social Security Act, referred to in subsection. (b)(2)(B)(i), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Act is classified generally to part A (§601 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The National and Community Service Act of 1990, referred to in subsection. (b)(2)(B)(iv), is Pub. L. 101-610, Nov. 16, 1990, 104 Stat. 3127, as amended, which is classified principally to chapter 129 (§12501 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of Title 42 and Tables.

This Act, referred to in subsection. (f)(2), is Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 936, as amended, known as the Workforce Investment Act of 1998. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

AMENDMENTS

1998—Subsec. (b)(1)(B)(iv). Pub. L. 105-332, §5(a)(1), inserted “(other than part C of title I of such Act and subject to subsection (f) of this section)” before semicolon.

Subsec. (f). Pub. L. 105-332, §5(a)(2), added subsec. (f).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2801, 2821, 2832, 2833, 2864, 2944 of this title; title 20 sections 2341, 2342.

**§ 2842. Identification of eligible providers of training services**

**(a) Eligibility requirements**

**(1) In general**

Except as provided in subsection (h) of this section, to be identified as an eligible provider of training services described in section 2864(d)(4) of this title (referred to in this section as “training services”) in a local area and to be eligible to receive funds made available under section 2863(b) of this title for the provision of training services, a provider of such services shall meet the requirements of this section.

**(2) Providers**

Subject to the provisions of this section, to be eligible to receive the funds, the provider shall be—

(A) a postsecondary educational institution that—

(i) is eligible to receive Federal funds under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq. [and 42 U.S.C. 2751 et seq.]); and

(ii) provides a program that leads to an associate degree, baccalaureate degree, or certificate;

(B) an entity that carries out programs under the Act of August 16, 1937 (commonly known as the “National Apprenticeship Act” 50 Stat. 664, chapter 663; 29 U.S.C. 50 et seq.); or

(C) another public or private provider of a program of training services.

**(b) Initial eligibility determination**

**(1) Postsecondary educational institutions and entities carrying out apprenticeship programs**

To be initially eligible to receive funds as described in subsection (a) of this section to carry out a program described in subparagraph (A) or (B) of subsection (a)(2) of this section, a provider described in subparagraph (A) or (B), respectively, of subsection (a)(2) of this section shall submit an application, to the local board for the local area in which the provider desires to provide training services, at such time, in such manner, and containing such information as the local board may require.

**(2) Other eligible providers**

**(A) Procedure**

Each Governor of a State shall establish a procedure for use by local boards in the State in determining the initial eligibility of a provider described in subsection (a)(2)(C) of this section to receive funds as described in subsection (a) of this section for a program of training services, including the initial eligibility of—

(i) a postsecondary educational institution to receive such funds for a program not described in subsection (a)(2)(A) of this section; and

(ii) a provider described in subsection (a)(2)(B) of this section to receive such funds for a program not described in subsection (a)(2)(B) of this section.

**(B) Recommendations**

In developing such procedure, the Governor shall solicit and take into consideration the recommendations of local boards and providers of training services within the State.

**(C) Opportunity to submit comments**

The Governor shall provide an opportunity, during the development of the procedure, for interested members of the public, including representatives of business and labor organizations, to submit comments on such procedure.

**(D) Requirements**

In establishing the procedure, the Governor shall require that, to be initially eligible to receive funds as described in subsection (a) of this section for a program, a provider described in subsection (a)(2)(C) of this section—

(i) shall submit an application, to the local board for the local area in which the provider desires to provide training services, at such time and in such manner as may be required, and containing a description of the program;

(ii) if the provider provides training services through a program on the date of application, shall include in the application an appropriate portion of the performance information and program cost information described in subsection (d) of this section for the program, as specified in the procedure, and shall meet appropriate levels of performance for the program, as specified in the procedure; and

(iii) if the provider does not provide training services on such date, shall meet appropriate requirements, as specified in the procedure.

**(c) Subsequent eligibility determination**

**(1) Procedure**

Each Governor of a State shall establish a procedure for use by local boards in the State in determining the eligibility of a provider described in subsection (a)(2) of this section to continue to receive funds as described in subsection (a) of this section for a program after an initial period of eligibility under subsection (b) of this section (referred to in this section as “subsequent eligibility”).

**(2) Recommendations**

In developing such procedure, the Governor shall solicit and take into consideration the recommendations of local boards and providers of training services within the State.

**(3) Opportunity to submit comments**

The Governor shall provide an opportunity, during the development of the procedure, for interested members of the public, including representatives of business and labor organizations, to submit comments on such procedure.

**(4) Considerations**

In developing such procedure, the Governor shall ensure that the procedure requires the local boards to take into consideration, in

making the determinations of subsequent eligibility—

(A) the specific economic, geographic, and demographic factors in the local areas in which providers seeking eligibility are located; and

(B) the characteristics of the populations served by providers seeking eligibility, including the demonstrated difficulties in serving such populations, where applicable.

#### **(5) Requirements**

In establishing the procedure, the Governor shall require that, to be eligible to continue to receive funds as described in subsection (a) of this section for a program after the initial period of eligibility, a provider described in subsection (a)(2) of this section shall—

(A) submit the performance information and program cost information described in subsection (d)(1) of this section for the program and any additional information required to be submitted in accordance with subsection (d)(2) of this section for the program annually to the appropriate local board at such time and in such manner as may be required; and

(B) annually meet the performance levels described in paragraph (6) for the program, as demonstrated utilizing quarterly records described in section 2871 of this title, in a manner consistent with section 2871 of this title.

#### **(6) Levels of performance**

##### **(A) In general**

At a minimum, the procedure described in paragraph (1) shall require the provider to meet minimum acceptable levels of performance based on the performance information referred to in paragraph (5)(A).

##### **(B) Higher levels of performance eligibility**

The local board may require higher levels of performance than the levels referred to in subparagraph (A) for subsequent eligibility to receive funds as described in subsection (a) of this section.

#### **(d) Performance and cost information**

##### **(1) Required information**

For a provider of training services to be determined to be subsequently eligible under subsection (c) of this section to receive funds as described in subsection (a) of this section, such provider shall, under subsection (c) of this section, submit—

(A) verifiable program-specific performance information consisting of—

(i) program information, including—

(I) the program completion rates for all individuals participating in the applicable program conducted by the provider;

(II) the percentage of all individuals participating in the applicable program who obtain unsubsidized employment, which may also include information specifying the percentage of the individuals who obtain unsubsidized employment in an occupation related to the program conducted; and

(III) the wages at placement in employment of all individuals participating in the applicable program; and

(ii) training services information for all participants who received assistance under section 2864 of this title to participate in the applicable program, including—

(I) the percentage of participants who have completed the applicable program and who are placed in unsubsidized employment;

(II) the retention rates in unsubsidized employment of participants who have completed the applicable program, 6 months after the first day of the employment;

(III) the wages received by participants who have completed the applicable program, 6 months after the first day of the employment involved; and

(IV) where appropriate, the rates of licensure or certification, attainment of academic degrees or equivalents, or attainment of other measures of skills, of the graduates of the applicable program; and

(B) information on program costs (such as tuition and fees) for participants in the applicable program.

#### **(2) Additional information**

Subject to paragraph (3), in addition to the performance information described in paragraph (1)—

(A) the Governor may require that a provider submit, under subsection (c) of this section, such other verifiable program-specific performance information as the Governor determines to be appropriate to obtain such subsequent eligibility, which may include information relating to—

(i) retention rates in employment and the subsequent wages of all individuals who complete the applicable program;

(ii) where appropriate, the rates of licensure or certification of all individuals who complete the program; and

(iii) the percentage of individuals who complete the program who attain industry-recognized occupational skills in the subject, occupation, or industry for which training is provided through the program, where applicable; and

(B) the Governor, or the local board, may require a provider to submit, under subsection (c) of this section, other verifiable program-specific performance information to obtain such subsequent eligibility.

#### **(3) Conditions**

##### **(A) In general**

If the Governor or a local board requests additional information under paragraph (2) that imposes extraordinary costs on providers, or if providers experience extraordinary costs in the collection of information required under paragraph (1)(A)(ii), the Governor or the local board shall provide access to cost-effective methods for the collection of the information involved, or the Governor

shall provide additional resources to assist providers in the collection of such information from funds made available as described in sections 2853(a) and 2863(a)(1) of this title, as appropriate.

**(B) Higher education eligibility requirements**

The local board and the designated State agency described in subsection (i) of this section may accept program-specific performance information consistent with the requirements for eligibility under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq. [and 42 U.S.C. 2751 et seq.]) from a provider for purposes of enabling the provider to fulfill the applicable requirements of this subsection, if such information is substantially similar to the information otherwise required under this subsection.

**(e) Local identification**

**(1) In general**

The local board shall place on a list providers submitting an application under subsection (b)(1) of this section and providers determined to be initially eligible under subsection (b)(2) of this section, and retain on the list providers determined to be subsequently eligible under subsection (c) of this section, to receive funds as described in subsection (a) of this section for the provision of training services in the local area served by the local board. The list of providers shall be accompanied by any performance information and program cost information submitted under subsection (b) or (c) of this section by the provider.

**(2) Submission to State agency**

On placing or retaining a provider on the list, the local board shall submit, to the designated State agency described in subsection (i) of this section, the list and the performance information and program cost information referred to in paragraph (1). If the agency determines, within 30 days after the date of the submission, that the provider does not meet the performance levels described in subsection (c)(6) of this section for the program (where applicable), the agency may remove the provider from the list for the program. The agency may not remove from the list an agency submitting an application under subsection (b)(1) of this section.

**(3) Identification of eligible providers**

A provider who is placed or retained on the list under paragraph (1), and is not removed by the designated State agency under paragraph (2), for a program, shall be considered to be identified as an eligible provider of training services for the program.

**(4) Availability**

**(A) State list**

The designated State agency shall compile a single list of the providers identified under paragraph (3) from all local areas in the State and disseminate such list, and the performance information and program cost information described in paragraph (1), to the one-stop delivery systems within the State.

Such list and information shall be made widely available to participants in employment and training activities authorized under section 2864 of this title and others through the one-stop delivery system.

**(B) Selection from State list**

Individuals eligible to receive training services under section 2864(d)(4) of this title shall have the opportunity to select any of the eligible providers, from any of the local areas in the State, that are included on the list described in subparagraph (A) to provide the services, consistent with the requirements of section 2864 of this title.

**(5) Acceptance of individual training accounts by other States**

States may enter into agreements, on a reciprocal basis, to permit eligible providers of training services in a State to accept individual training accounts provided in another State.

**(f) Enforcement**

**(1) Accuracy of information**

If the designated State agency, after consultation with the local board involved, determines that an eligible provider or individual supplying information on behalf of the provider intentionally supplies inaccurate information under this section, the agency shall terminate the eligibility of the provider to receive funds described in subsection (a) of this section for any program for a period of time, but not less than 2 years.

**(2) Noncompliance**

If the designated State agency, or the local board working with the State agency, determines that an eligible provider described in subsection (a) of this section substantially violates any requirement under this Act, the agency, or the local board working with the State agency, may terminate the eligibility of such provider to receive funds described in subsection (a) of this section for the program involved or take such other action as the agency or local board determines to be appropriate.

**(3) Repayment**

A provider whose eligibility is terminated under paragraph (1) or (2) for a program shall be liable for repayment of all funds described in subsection (a) of this section received for the program during any period of noncompliance described in such paragraph.

**(4) Construction**

This subsection and subsection (g) of this section shall be construed to provide remedies and penalties that supplement, but do not supplant, other civil and criminal remedies and penalties.

**(g) Appeal**

The Governor shall establish procedures for providers of training services to appeal a denial of eligibility by the local board or the designated State agency under subsection (b), (c), or (e) of this section, a termination of eligibility or other action by the board or agency under

subsection (f) of this section, or a denial of eligibility by a one-stop operator under subsection (h) of this section. Such procedures shall provide an opportunity for a hearing and prescribe appropriate time limits to ensure prompt resolution of the appeal.

**(h) On-the-job training or customized training exception**

**(1) In general**

Providers of on-the-job training or customized training shall not be subject to the requirements of subsections (a) through (e) of this section.

**(2) Collection and dissemination of information**

A one-stop operator in a local area shall collect such performance information from on-the-job training and customized training providers as the Governor may require, determine whether the providers meet such performance criteria as the Governor may require, and disseminate information identifying providers that meet the criteria as eligible providers, and the performance information, through the one-stop delivery system. Providers determined to meet the criteria shall be considered to be identified as eligible providers of training services.

**(i) Administration**

The Governor shall designate a State agency to make the determinations described in subsection (e)(2) of this section, take the enforcement actions described in subsection (f) of this section, and carry out other duties described in this section.

(Pub. L. 105-220, title I, §122, Aug. 7, 1998, 112 Stat. 965.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsecs. (a)(2)(A)(i) and (d)(3)(B), is Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1219, as amended. Title IV of the Act is classified generally to subchapter IV (§1070 et seq.) of chapter 28 of Title 20, Education, and part C (§2751 et seq.) of subchapter I of chapter 34 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

The National Apprenticeship Act, referred to in subsec. (a)(2)(B), is act Aug. 16, 1937, ch. 663, 50 Stat. 664, as amended, which is classified generally to chapter 4C (§50 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 50 of this title and Tables.

This Act, referred to in subsec. (f)(2), is Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 936, as amended, known as the Workforce Investment Act of 1998. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2801, 2822, 2832, 2864, 2888 of this title.

**§ 2843. Identification of eligible providers of youth activities**

From funds allocated under paragraph (2)(A) or (3) of section 2853(b) of this title to a local area, the local board for such area shall identify eligible providers of youth activities by award-

ing grants or contracts on a competitive basis, based on the recommendations of the youth council and on the criteria contained in the State plan, to the providers to carry out the activities, and shall conduct oversight with respect to the providers, in the local area.

(Pub. L. 105-220, title I, §123, Aug. 7, 1998, 112 Stat. 971.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2801, 2832, 2854, 2864 of this title.

PART D—YOUTH ACTIVITIES

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 2945 of this title; title 20 section 2411.

**§ 2851. General authorization**

The Secretary shall make an allotment under section 2852(b)(1)(C) of this title to each State that meets the requirements of section 2822 of this title and a grant to each outlying area that complies with the requirements of this chapter, to assist the State or outlying area, and to enable the State or outlying area to assist local areas, for the purpose of providing workforce investment activities for eligible youth in the State or outlying area and in the local areas.

(Pub. L. 105-220, title I, §126, Aug. 7, 1998, 112 Stat. 971.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this title” meaning title I of Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 939, as amended, which enacted this chapter, repealed sections 1501 to 1505, 1511 to 1583, 1592 to 1735, 1737 to 1791h, 1792 to 1792b, 2301 to 2314 of this title, section 211 of Title 40, Appendix, Public Buildings, Property, and Works, sections 11421, 11441 to 11447, 11449, 11450, 11461 to 11466, 11471, and 11472 of Title 42, The Public Health and Welfare, and sections 42101 to 42106 of Title 49, Transportation, enacted provisions set out as notes under sections 1501, 2301, and 2940 of this title and section 11421 of Title 42, and repealed provisions set out as notes under sections 801 and 2301 of this title and section 1255a of Title 8, Aliens and Nationality. For complete classification of title I to the Code, see Tables.

**§ 2852. State allotments**

**(a) In general**

The Secretary shall—

(1) for each fiscal year in which the amount appropriated under section 2872(a) of this title exceeds \$1,000,000,000, reserve a portion determined under subsection (b)(1)(A) of this section of the amount appropriated under section 2872(a) of this title for use under sections 2912 (relating to migrant and seasonal farmworker programs) and 2914 (relating to youth opportunity grants) of this title; and

(2) use the remainder of the amount appropriated under section 2872(a) of this title for a fiscal year to make allotments and grants in accordance with subparagraphs (B) and (C) of subsection (b)(1) of this section and make funds available for use under section 2911 of this title (relating to Native American programs).



**(b) Allotment among States****(1) Youth activities****(A) Youth opportunity grants****(i) In general**

For each fiscal year in which the amount appropriated under section 2872(a) of this title exceeds \$1,000,000,000, the Secretary shall reserve a portion of the amount to provide youth opportunity grants and other activities under section 2914 of this title (relating to youth opportunity grants) and provide youth activities under section 2912 of this title (relating to migrant and seasonal farmworker programs).

**(ii) Portion**

The portion referred to in clause (i) shall equal, for a fiscal year—

(I) except as provided in subclause (II), the difference obtained by subtracting \$1,000,000,000 from the amount appropriated under section 2872(a) of this title for the fiscal year; or

(II) for any fiscal year in which the amount is \$1,250,000,000 or greater, \$250,000,000.

**(iii) Youth activities for farmworkers**

From the portion described in clause (i) for a fiscal year, the Secretary shall make available 4 percent of such portion to provide youth activities under section 2912 of this title.

**(iv) Role model academy project**

From the portion described in clause (i) for fiscal year 1999, the Secretary shall make available such sums as the Secretary determines to be appropriate to carry out section 2914(g) of this title.

**(B) Outlying areas****(i) In general**

From the amount made available under subsection (a)(2) of this section for a fiscal year, the Secretary shall reserve not more than  $\frac{1}{4}$  of 1 percent of the amount appropriated under section 2872(a) of this title for the fiscal year—

(I) to provide assistance to the outlying areas to carry out youth activities and statewide workforce investment activities; and

(II) for each of fiscal years 1999, 2000, and 2001, to carry out the competition described in clause (ii), except that the funds reserved to carry out such clause for any such fiscal year shall not exceed the amount reserved for the Freely Associated States for fiscal year 1997, from amounts reserved under sections 252(a) and 262(a)(1) of the Job Training Partnership Act [29 U.S.C. 1631(a), 1642(a)(1)] (as in effect on the day before August 7, 1998).

**(ii) Limitation for Freely Associated States****(I) Competitive grants**

The Secretary shall use funds described in clause (i)(II) to award grants to Guam, American Samoa, the Com-

monwealth of the Northern Mariana Islands, and the Freely Associated States to carry out youth activities and statewide workforce investment activities.

**(II) Award basis**

The Secretary shall award grants pursuant to subclause (I) on a competitive basis and pursuant to the recommendations of experts in the field of employment and training, working through the Pacific Region Educational Laboratory in Honolulu, Hawaii.

**(III) Assistance requirements**

Any Freely Associated State that desires to receive assistance under this subparagraph shall submit an application to the Secretary and shall include in the application for assistance—

(aa) information demonstrating that the Freely Associated State will meet all conditions that apply to States under this chapter;

(bb) an assurance that, notwithstanding any other provision of this chapter, the Freely Associated State will use such assistance only for the direct provision of services; and

(cc) such other information and assurances as the Secretary may require.

**(IV) Termination of eligibility**

Notwithstanding any other provision of law, the Freely Associated States shall not receive any assistance under this subparagraph for any program year that begins after September 30, 2001.

**(V) Administrative costs**

The Secretary may provide not more than 5 percent of the funds made available for grants under subclause (I) to pay the administrative costs of the Pacific Region Educational Laboratory in Honolulu, Hawaii, regarding activities assisted under this clause.

**(iii) Additional requirement**

The provisions of Public Law 95-134, permitting the consolidation of grants by the outlying areas, shall not apply to assistance provided to those areas, including the Freely Associated States, under this subparagraph.

**(C) States****(i) In general**

After determining the amounts to be reserved under subparagraph (A) (if any) and subparagraph (B), the Secretary shall—

(I) from the amount referred to in subsection (a)(2) of this section for a fiscal year, make available not more than 1.5 percent to provide youth activities under section 2911 of this title (relating to Native Americans); and

(II) allot the remainder of the amount referred to in subsection (a)(2) of this section for a fiscal year to the States pursuant to clause (ii) for youth activities and statewide workforce investment activities.

**(ii) Formula**

Subject to clauses (iii) and (iv), of the remainder—

(I) 33⅓ percent shall be allotted on the basis of the relative number of unemployed individuals in areas of substantial unemployment in each State, compared to the total number of unemployed individuals in areas of substantial unemployment in all States;

(II) 33⅓ percent shall be allotted on the basis of the relative excess number of unemployed individuals in each State, compared to the total excess number of unemployed individuals in all States; and

(III) 33⅓ percent shall be allotted on the basis of the relative number of disadvantaged youth in each State, compared to the total number of disadvantaged youth in all States, except as described in clause (iii).

**(iii) Calculation**

In determining an allotment under clause (ii)(III) for any State in which there is a local area designated under section 2831(a)(2)(B) of this title (relating to the area served by a rural concentrated employment program grant recipient), the allotment shall be based on the higher of—

(I) the number of individuals who are age 16 through 21 in families with an income below the low-income level in such area; or

(II) the number of disadvantaged youth in such area.

**(iv) Minimum and maximum percentages and minimum allotments**

In making allotments under this subparagraph, the Secretary shall ensure the following:

**(I) Minimum percentage and allotment**

Subject to subclause (IV), the Secretary shall ensure that no State shall receive an allotment for a fiscal year that is less than the greater of—

(aa) an amount based on 90 percent of the allotment percentage of the State for the preceding fiscal year; or

(bb) 100 percent of the total of the allotments of the State under sections 252 and 262 of the Job Training Partnership Act [29 U.S.C. 1631, 1642] (as in effect on the day before August 7, 1998) for fiscal year 1998.

**(II) Small State minimum allotment**

Subject to subclauses (I), (III), and (IV), the Secretary shall ensure that no State shall receive an allotment under this subparagraph that is less than the total of—

(aa) ⅓ of 1 percent of \$1,000,000,000 of the remainder described in clause (i)(II) for the fiscal year; and

(bb) if the remainder described in clause (i)(II) for the fiscal year exceeds \$1,000,000,000, ⅔ of 1 percent of the excess.

**(III) Maximum percentage**

Subject to subclause (I), the Secretary shall ensure that no State shall receive an allotment percentage for a fiscal year that is more than 130 percent of the allotment percentage of the State for the preceding fiscal year.

**(IV) Minimum funding**

In any fiscal year in which the remainder described in clause (i)(II) does not exceed \$1,000,000,000, the minimum allotments under subclauses (I) and (II) shall be calculated by the methodology for calculating the corresponding allotments under parts B and C of title II of the Job Training Partnership Act [29 U.S.C. 1630 et seq., 1641 et seq.], as in effect on July 1, 1998.

**(2) Definitions**

For the purpose of the formula specified in paragraph (1)(C):

**(A) Allotment percentage**

The term “allotment percentage”, used with respect to fiscal year 2000 or a subsequent fiscal year, means a percentage of the remainder described in paragraph (1)(C)(i)(II) that is received through an allotment made under paragraph (1)(C) for the fiscal year. The term, used with respect to fiscal year 1998 or 1999, means the percentage of the amounts allotted to States under sections 252(b) and 262(a) of the Job Training Partnership Act [29 U.S.C. 1631(a), 1642(a)] (as in effect on the day before August 7, 1998) that is received under such sections by the State involved for fiscal year 1998 or 1999.

**(B) Area of substantial unemployment**

The term “area of substantial unemployment” means any area that is of sufficient size and scope to sustain a program of workforce investment activities carried out under this subchapter and that has an average rate of unemployment of at least 6.5 percent for the most recent 12 months, as determined by the Secretary. For purposes of this subparagraph, determinations of areas of substantial unemployment shall be made once each fiscal year.

**(C) Disadvantaged youth**

Subject to paragraph (3), the term “disadvantaged youth” means an individual who is age 16 through 21 who received an income, or is a member of a family that received a total family income, that, in relation to family size, does not exceed the higher of—

(i) the poverty line; or

(ii) 70 percent of the lower living standard income level.

**(D) Excess number**

The term “excess number” means, used with respect to the excess number of unemployed individuals within a State, the higher of—

(i) the number that represents the number of unemployed individuals in excess of 4.5 percent of the civilian labor force in the State; or

(ii) the number that represents the number of unemployed individuals in excess of 4.5 percent of the civilian labor force in areas of substantial unemployment in such State.

**(E) Low-income level**

The term “low-income level” means \$7,000 with respect to income in 1969, and for any later year means that amount that bears the same relationship to \$7,000 as the Consumer Price Index for that year bears to the Consumer Price Index for 1969, rounded to the nearest \$1,000.

**(3) Special rule**

For the purpose of the formula specified in paragraph (1)(C), the Secretary shall, as appropriate and to the extent practicable, exclude college students and members of the Armed Forces from the determination of the number of disadvantaged youth.

**(4) Definition**

In this subsection, the term “Freely Associated State” means the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

**(c) Reallotment**

**(1) In general**

The Secretary shall, in accordance with this subsection, reallot to eligible States amounts that are allotted under this section for youth activities and statewide workforce investment activities and that are available for reallotment.

**(2) Amount**

The amount available for reallotment for a program year is equal to the amount by which the unobligated balance of the State allotment under this section for such activities, at the end of the program year prior to the program year for which the determination under this paragraph is made, exceeds 20 percent of such allotment for the prior program year.

**(3) Reallotment**

In making reallotments to eligible States of amounts available pursuant to paragraph (2) for a program year, the Secretary shall allot to each eligible State an amount based on the relative amount allotted to such State under this section for such activities for the prior program year, as compared to the total amount allotted to all eligible States under this section for such activities for such prior program year.

**(4) Eligibility**

For purposes of this subsection, an eligible State means a State that has obligated at least 80 percent of the State allotment under this section for such activities for the program year prior to the program year for which the determination under paragraph (2) is made.

**(5) Procedures**

The Governor of each State shall prescribe uniform procedures for the obligation of funds by local areas within the State in order to avoid the requirement that funds be made

available for reallotment under this subsection. The Governor shall further prescribe equitable procedures for making funds available from the State and local areas in the event that a State is required to make funds available for reallotment under this subsection.

(Pub. L. 105-220, title I, §127, Aug. 7, 1998, 112 Stat. 971.)

REFERENCES IN TEXT

Public Law 95-134, referred to in subsec. (b)(1)(B)(iii), is Pub. L. 95-134, Oct. 15, 1977, 91 Stat. 1159, as amended. Provisions relating to consolidation of grants are contained in section 501 of Pub. L. 95-134 which is classified to section 1469a of Title 48, Territories and Insular Possessions.

The Job Training Partnership Act, referred to in subsec. (b)(1)(C)(iv)(IV), is Pub. L. 97-300, Oct. 13, 1982, 96 Stat. 1322, as amended. Parts B and C of title II of the Act are classified generally to parts B (§1630 et seq.) and C (§1641 et seq.), respectively, of subchapter II of chapter 19 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2801, 2822, 2831, 2851, 2853, 2854, 2862, 2864, 2871, 2872, 2912, 2914, 2932, 2944 of this title.

**§ 2853. Within State allocations**

**(a) Reservations for State activities**

**(1) In general**

The Governor of a State shall reserve not more than 15 percent of each of the amounts allotted to the State under section 2852(b)(1)(C) of this title and paragraphs (1)(B) and (2)(B) of section 2862(b) of this title for a fiscal year for statewide workforce investment activities.

**(2) Use of funds**

Regardless of whether the reserved amounts were allotted under section 2852(b)(1)(C) of this title, or under paragraph (1)(B) or (2)(B) of section 2862(b) of this title, the Governor may use the reserved amounts to carry out statewide youth activities described in section 2854(b) of this title or statewide employment and training activities, for adults or for dislocated workers, described in paragraph (2)(B) or (3) of section 2864(a) of this title.

**(b) Within State allocation**

**(1) Methods**

The Governor, acting in accordance with the State plan, and after consulting with chief elected officials in the local areas, shall allocate the funds that are allotted to the State for youth activities and statewide workforce investment activities under section 2852(b)(1)(C) of this title and are not reserved under subsection (a) of this section, in accordance with paragraph (2) or (3).

**(2) Formula allocation**

**(A) Youth activities**

**(i) Allocation**

In allocating the funds described in paragraph (1) to local areas, a State may allocate—

(I) 33⅓ percent of the funds on the basis described in section 2852(b)(1)(C)(ii)(I) of this title;

(II) 33⅓ percent of the funds on the basis described in section 2852(b)(1)(C)(ii)(II) of this title; and

(III) 33⅓ percent of the funds on the basis described in clauses (ii)(III) and (iii) of section 2852(b)(1)(C) of this title.

**(ii) Minimum percentage**

Effective at the end of the second full fiscal year after the date on which a local area is designated under section 2831 of this title, the local area shall not receive an allocation percentage for a fiscal year that is less than 90 percent of the average allocation percentage of the local area for the 2 preceding fiscal years. Amounts necessary for increasing such allocations to local areas to comply with the preceding sentence shall be obtained by ratably reducing the allocations to be made to other local areas under this subparagraph.

**(iii) Definition**

The term “allocation percentage”, used with respect to fiscal year 2000 or a subsequent fiscal year, means a percentage of the funds referred to in clause (i), received through an allocation made under this subparagraph, for the fiscal year.

**(B) Application**

For purposes of carrying out subparagraph (A)—

(i) references in section 2852(b) of this title to a State shall be deemed to be references to a local area;

(ii) references in section 2852(b) of this title to all States shall be deemed to be references to all local areas in the State involved; and

(iii) except as described in clause (i), references in section 2852(b)(1) of this title to the term “excess number” shall be considered to be references to the term as defined in section 2852(b)(2) of this title.

**(3) Youth discretionary allocation**

In lieu of making the allocation described in paragraph (2)(A), in allocating the funds described in paragraph (1) to local areas, a State may distribute—

(A) a portion equal to not less than 70 percent of the funds in accordance with paragraph (2)(A); and

(B) the remaining portion of the funds on the basis of a formula that—

(i) incorporates additional factors (other than the factors described in paragraph (2)(A)) relating to—

(I) excess youth poverty in urban, rural, and suburban local areas; and

(II) excess unemployment above the State average in urban, rural, and suburban local areas; and

(ii) was developed by the State board and approved by the Secretary as part of the State plan.

**(4) Limitation**

**(A) In general**

Of the amount allocated to a local area under this subsection and section 2863(b) of this title for a fiscal year, not more than 10 percent of the amount may be used by the local board for the administrative cost of carrying out local workforce investment activities described in subsection (d) or (e) of section 2864 of this title or in section 2854(c) of this title.

**(B) Use of funds**

Funds made available for administrative costs under subparagraph (A) may be used for the administrative cost of any of the local workforce investment activities described in subsection (d) or (e) of section 2864 of this title or in section 2854(c) of this title, regardless of whether the funds were allocated under this subsection or section 2863(b) of this title.

**(C) Regulations**

The Secretary, after consulting with the Governors, shall develop and issue regulations that define the term “administrative cost” for purposes of this chapter. Such definition shall be consistent with generally accepted accounting principles.

**(c) Reallocation among local areas**

**(1) In general**

The Governor may, in accordance with this subsection, reallocate to eligible local areas within the State amounts that are allocated under paragraph (2)(A) or (3) of subsection (b) of this section for youth activities and that are available for reallocation.

**(2) Amount**

The amount available for reallocation for a program year is equal to the amount by which the unobligated balance of the local area allocation under paragraph (2)(A) or (3) of subsection (b) of this section for such activities, at the end of the program year prior to the program year for which the determination under this paragraph is made exceeds 20 percent of such allocation for the prior program year.

**(3) Reallocation**

In making reallocations to eligible local areas of amounts available pursuant to paragraph (2) for a program year, the Governor shall allocate to each eligible local area within the State an amount based on the relative amount allocated to such local area under subsection (b)(3) of this section for such activities for the prior program year, as compared to the total amount allocated to all eligible local areas in the State under subsection (b)(3) of this section for such activities for such prior program year. For purposes of this paragraph, local areas that received allocations under subsection (b)(2)(A) of this section for the prior program year shall be treated as if the local areas received allocations under subsection (b)(3) of this section for such year.

**(4) Eligibility**

For purposes of this subsection, an eligible local area means a local area that has obli-

gated at least 80 percent of the local area allocation under paragraph (2)(A) or (3) of subsection (b) of this section for such activities, for the program year prior to the program year for which the determination under paragraph (2) is made.

(Pub. L. 105-220, title I, §128, Aug. 7, 1998, 112 Stat. 976.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2821, 2822, 2832, 2842, 2843, 2854, 2863, 2864, 2932 of this title.

### § 2854. Use of funds for youth activities

#### (a) Purposes

The purposes of this section are—

(1) to provide, to eligible youth seeking assistance in achieving academic and employment success, effective and comprehensive activities, which shall include a variety of options for improving educational and skill competencies and provide effective connections to employers;

(2) to ensure on-going mentoring opportunities for eligible youth with adults committed to providing such opportunities;

(3) to provide opportunities for training to eligible youth;

(4) to provide continued supportive services for eligible youth;

(5) to provide incentives for recognition and achievement to eligible youth; and

(6) to provide opportunities for eligible youth in activities related to leadership, development, decisionmaking, citizenship, and community service.

#### (b) Statewide youth activities

##### (1) In general

Funds reserved by a Governor for a State as described in sections 2853(a) and 2863(a)(1) of this title—

(A) shall be used to carry out the statewide youth activities described in paragraph (2); and

(B) may be used to carry out any of the statewide youth activities described in paragraph (3),

regardless of whether the funds were allotted to the State under section 2852(b)(1) of this title or under paragraph (1) or (2) of section 2862(b) of this title.

##### (2) Required statewide youth activities

A State shall use funds reserved as described in sections 2853(a) and 2863(a)(1) of this title (regardless of whether the funds were allotted to the State under section 2852(b)(1) of this title or paragraph (1) or (2) of section 2862(b) of this title) to carry out statewide youth activities, which shall include—

(A) disseminating a list of eligible providers of youth activities described in section 2843 of this title;

(B) carrying out activities described in clauses (ii) through (vi) of section 2864(a)(2)(B) of this title, except that references in such clauses to activities authorized under section 2864 of this title shall be considered to be references to activities authorized under this section; and

(C) providing additional assistance to local areas that have high concentrations of eligible youth to carry out the activities described in subsection (c) of this section.

#### (3) Allowable statewide youth activities

A State may use funds reserved as described in sections 2853(a) and 2863(a)(1) of this title (regardless of whether the funds were allotted to the State under section 2852(b)(1) of this title or paragraph (1) or (2) of section 2862(b) of this title) to carry out additional statewide youth activities, which may include—

(A) carrying out activities described in clauses (i), (ii), (iii), (iv)(II), and (vi)(II) of section 2864(a)(3)(A) of this title, except that references in such clauses to activities authorized under section 2864 of this title shall be considered to be references to activities authorized under this section; and

(B) carrying out, on a statewide basis, activities described in subsection (c) of this section.

#### (4) Prohibition

No funds described in this subsection or section 2864(a) of this title shall be used to develop or implement education curricula for school systems in the State.

#### (c) Local elements and requirements

##### (1) Program design

Funds allocated to a local area for eligible youth under paragraph (2)(A) or (3), as appropriate, of section 2853(b) of this title shall be used to carry out, for eligible youth, programs that—

(A) provide an objective assessment of the academic levels, skill levels, and service needs of each participant, which assessment shall include a review of basic skills, occupational skills, prior work experience, employability, interests, aptitudes (including interests and aptitudes for nontraditional jobs), supportive service needs, and developmental needs of such participant, except that a new assessment of a participant is not required if the provider carrying out such a program determines it is appropriate to use a recent assessment of the participant conducted pursuant to another education or training program;

(B) develop service strategies for each participant that shall identify an employment goal (including, in appropriate circumstances, nontraditional employment), appropriate achievement objectives, and appropriate services for the participant taking into account the assessment conducted pursuant to subparagraph (A), except that a new service strategy for a participant is not required if the provider carrying out such a program determines it is appropriate to use a recent service strategy developed for the participant under another education or training program; and

(C) provide—

(i) preparation for postsecondary educational opportunities, in appropriate cases;

(ii) strong linkages between academic and occupational learning;

(iii) preparation for unsubsidized employment opportunities, in appropriate cases; and

(iv) effective connections to intermediaries with strong links to—

(I) the job market; and

(II) local and regional employers.

## **(2) Program elements**

The programs described in paragraph (1) shall provide elements consisting of—

(A) tutoring, study skills training, and instruction, leading to completion of secondary school, including dropout prevention strategies;

(B) alternative secondary school services, as appropriate;

(C) summer employment opportunities that are directly linked to academic and occupational learning;

(D) as appropriate, paid and unpaid work experiences, including internships and job shadowing;

(E) occupational skill training, as appropriate;

(F) leadership development opportunities, which may include community service and peer-centered activities encouraging responsibility and other positive social behaviors during non-school hours, as appropriate;

(G) supportive services;

(H) adult mentoring for the period of participation and a subsequent period, for a total of not less than 12 months;

(I) followup services for not less than 12 months after the completion of participation, as appropriate; and

(J) comprehensive guidance and counseling, which may include drug and alcohol abuse counseling and referral, as appropriate.

## **(3) Additional requirements**

### **(A) Information and referrals**

Each local board shall ensure that each participant or applicant who meets the minimum income criteria to be considered an eligible youth shall be provided—

(i) information on the full array of applicable or appropriate services that are available through the local board or other eligible providers or one-stop partners, including those receiving funds under this subchapter; and

(ii) referral to appropriate training and educational programs that have the capacity to serve the participant or applicant either on a sequential or concurrent basis.

### **(B) Applicants not meeting enrollment requirements**

Each eligible provider of a program of youth activities shall ensure that an eligible applicant who does not meet the enrollment requirements of the particular program or who cannot be served shall be referred for further assessment, as necessary, and referred to appropriate programs in accordance with subparagraph (A) to meet the basic skills and training needs of the applicant.

## **(C) Involvement in design and implementation**

The local board shall ensure that parents, participants, and other members of the community with experience relating to programs for youth are involved in the design and implementation of the programs described in paragraph (1).

## **(4) Priority**

### **(A) In general**

At a minimum, 30 percent of the funds described in paragraph (1) shall be used to provide youth activities to out-of-school youth.

### **(B) Exception**

A State that receives a minimum allotment under section 2852(b)(1) of this title in accordance with section 2852(b)(1)(C)(iv)(II) of this title or under section 2862(b)(1) of this title in accordance with section 2862(b)(1)(B)(iv)(II) of this title may reduce the percentage described in subparagraph (A) for a local area in the State, if—

(i) after an analysis of the eligible youth population in the local area, the State determines that the local area will be unable to meet the percentage described in subparagraph (A) due to a low number of out-of-school youth; and

(ii)(I) the State submits to the Secretary, for the local area, a request including a proposed reduced percentage for purposes of subparagraph (A), and the summary of the eligible youth population analysis; and

(II) the request is approved by the Secretary.

## **(5) Exceptions**

Not more than 5 percent of participants assisted under this section in each local area may be individuals who do not meet the minimum income criteria to be considered eligible youth, if such individuals are within one or more of the following categories:

(A) Individuals who are school dropouts.

(B) Individuals who are basic skills deficient.

(C) Individuals with educational attainment that is one or more grade levels below the grade level appropriate to the age of the individuals.

(D) Individuals who are pregnant or parenting.

(E) Individuals with disabilities, including learning disabilities.

(F) Individuals who are homeless or run-away youth.

(G) Individuals who are offenders.

(H) Other eligible youth who face serious barriers to employment as identified by the local board.

## **(6) Prohibitions**

### **(A) Prohibition against Federal control of education**

No provision of this Act shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control

over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system, or over the selection of library resources, textbooks, or other printed or published instructional materials by any educational institution, school, or school system.

**(B) Nonduplication**

All of the funds made available under this Act shall be used in accordance with the requirements of this Act. None of the funds made available under this Act may be used to provide funding under the School-to-Work Opportunities Act of 1994 (20 U.S.C. 6101 et seq.) or to carry out, through programs funded under this Act, activities that were funded under the School-to-Work Opportunities Act of 1994, unless the programs funded under this Act serve only those participants eligible to participate in the programs under this Act.

**(C) Noninterference and nonreplacement of regular academic requirements**

No funds described in paragraph (1) shall be used to provide an activity for eligible youth who are not school dropouts if participation in the activity would interfere with or replace the regular academic requirements of the youth.

**(7) Linkages**

In coordinating the programs authorized under this section, youth councils shall establish linkages with educational agencies responsible for services to participants as appropriate.

**(8) Volunteers**

The local board shall make opportunities available for individuals who have successfully participated in programs carried out under this section to volunteer assistance to participants in the form of mentoring, tutoring, and other activities.

(Pub. L. 105-220, title I, § 129, Aug. 7, 1998, 112 Stat. 978.)

REFERENCES IN TEXT

This Act, referred to in subsec. (c)(6)(A), (B), is Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 936, as amended, known as the Workforce Investment Act of 1998. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

The School-to-Work Opportunities Act of 1994, referred to in subsec. (c)(6)(B), is Pub. L. 103-239, May 4, 1994, 108 Stat. 568, as amended, which is classified principally to chapter 69 (§6101 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of Title 20 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2801, 2822, 2832, 2853, 2864, 2871, 2914 of this title.

PART E—ADULT AND DISLOCATED WORKER  
EMPLOYMENT AND TRAINING ACTIVITIES

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in title 20 section 2411.

**§ 2861. General authorization**

The Secretary shall make allotments under paragraphs (1)(B) and (2)(B) of section 2862(b) of this title to each State that meets the requirements of section 2822 of this title and a grant to each outlying area that complies with the requirements of this chapter, to assist the State or outlying area, and to enable the State or outlying area to assist local areas, for the purpose of providing workforce investment activities for adults, and dislocated workers, in the State or outlying area and in the local areas.

(Pub. L. 105-220, title I, § 131, Aug. 7, 1998, 112 Stat. 982.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this title” meaning title I of Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 939, as amended, which enacted this chapter, repealed sections 1501 to 1505, 1511 to 1583, 1592 to 1735, 1737 to 1791h, 1792 to 1792b, 2301 to 2314 of this title, section 211 of Title 40, Appendix, Public Buildings, Property, and Works, sections 11421, 11441 to 11447, 11449, 11450, 11461 to 11466, 11471, and 11472 of Title 42, The Public Health and Welfare, and sections 42101 to 42106 of Title 49, Transportation, enacted provisions set out as notes under sections 1501, 2301, and 2940 of this title and section 11421 of Title 42, and repealed provisions set out as notes under sections 801 and 2301 of this title and section 1255a of Title 8, Aliens and Nationality. For complete classification of title I to the Code, see Tables.

**§ 2862. State allotments**

**(a) In general**

The Secretary shall—

(1) make allotments and grants from the total amount appropriated under section 2872(b) of this title for a fiscal year in accordance with subsection (b)(1) of this section; and

(2)(A) reserve 20 percent of the amount appropriated under section 2872(c) of this title for a fiscal year for use under subsection (b)(2)(A) of this section, and under sections 2915(b) (relating to dislocated worker technical assistance), 2916(d) (relating to dislocated worker projects), and 2918 (relating to national emergency grants) of this title; and

(B) make allotments from 80 percent of the amount appropriated under section 2872(c) of this title for a fiscal year in accordance with subsection (b)(2)(B) of this section.

**(b) Allotment among States**

**(1) Adult employment and training activities**

**(A) Reservation for outlying areas**

**(i) In general**

From the amount made available under subsection (a)(1) of this section for a fiscal year, the Secretary shall reserve not more than  $\frac{1}{4}$  of 1 percent to provide assistance to the outlying areas.

**(ii) Applicability of additional requirements**

From the amount reserved under clause (i), the Secretary shall provide assistance to the outlying areas for adult employment and training activities and statewide workforce investment activities in accordance with the requirements of section

2852(b)(1)(B) of this title, except that the reference in section 2852(b)(1)(B)(i)(II) of this title to sections 252(d) and 262(a)(1) of the Job Training Partnership Act [29 U.S.C. 1631(d), 1642(a)(1)] shall be deemed to be a reference to section 202(a)(1) of the Job Training Partnership Act [29 U.S.C. 1602(a)(1)] (as in effect on the day before August 7, 1998).

**(B) States**

**(i) In general**

After determining the amount to be reserved under subparagraph (A), the Secretary shall allot the remainder of the amount referred to in subsection (a)(1) of this section for a fiscal year to the States pursuant to clause (ii) for adult employment and training activities and statewide workforce investment activities.

**(ii) Formula**

Subject to clauses (iii) and (iv), of the remainder—

(I) 33 $\frac{1}{3}$  percent shall be allotted on the basis of the relative number of unemployed individuals in areas of substantial unemployment in each State, compared to the total number of unemployed individuals in areas of substantial unemployment in all States;

(II) 33 $\frac{1}{3}$  percent shall be allotted on the basis of the relative excess number of unemployed individuals in each State, compared to the total excess number of unemployed individuals in all States; and

(III) 33 $\frac{1}{3}$  percent shall be allotted on the basis of the relative number of disadvantaged adults in each State, compared to the total number of disadvantaged adults in all States, except as described in clause (iii).

**(iii) Calculation**

In determining an allotment under clause (ii)(III) for any State in which there is a local area designated under section 2831(a)(2)(B) of this title, the allotment shall be based on the higher of—

(I) the number of adults in families with an income below the low-income level in such area; or

(II) the number of disadvantaged adults in such area.

**(iv) Minimum and maximum percentages and minimum allotments**

In making allotments under this subparagraph, the Secretary shall ensure the following:

**(I) Minimum percentage and allotment**

Subject to subclause (IV), the Secretary shall ensure that no State shall receive an allotment for a fiscal year that is less than the greater of—

(aa) an amount based on 90 percent of the allotment percentage of the State for the preceding fiscal year; or

(bb) 100 percent of the allotment of the State under section 202 of the Job

Training Partnership Act [29 U.S.C. 1602] (as in effect on the day before August 7, 1998) for fiscal year 1998.

**(II) Small State minimum allotment**

Subject to subclauses (I), (III), and (IV), the Secretary shall ensure that no State shall receive an allotment under this subparagraph that is less than the total of—

(aa)  $\frac{3}{10}$  of 1 percent of \$960,000,000 of the remainder described in clause (i) for the fiscal year; and

(bb) if the remainder described in clause (i) for the fiscal year exceeds \$960,000,000,  $\frac{2}{5}$  of 1 percent of the excess.

**(III) Maximum percentage**

Subject to subclause (I), the Secretary shall ensure that no State shall receive an allotment percentage for a fiscal year that is more than 130 percent of the allotment percentage of the State for the preceding fiscal year.

**(IV) Minimum funding**

In any fiscal year in which the remainder described in clause (i) does not exceed \$960,000,000, the minimum allotments under subclauses (I) and (II) shall be calculated by the methodology for calculating the corresponding allotments under part A of title II of the Job Training Partnership Act [29 U.S.C. 1601 et seq.], as in effect on July 1, 1998.

**(v) Definitions**

For the purpose of the formula specified in this subparagraph:

**(I) Adult**

The term “adult” means an individual who is not less than age 22 and not more than age 72.

**(II) Allotment percentage**

The term “allotment percentage”, used with respect to fiscal year 2000 or a subsequent fiscal year, means a percentage of the remainder described in clause (i) that is received through an allotment made under this subparagraph for the fiscal year. The term, used with respect to fiscal year 1998 or 1999, means the percentage of the amounts allotted to States under section 202(a) of the Job Training Partnership Act [29 U.S.C. 1602(a)] (as in effect on the day before August 7, 1998) that is received under such section by the State involved for fiscal year 1998 or 1999.

**(III) Area of substantial unemployment**

The term “area of substantial unemployment” means any area that is of sufficient size and scope to sustain a program of workforce investment activities carried out under this subchapter and that has an average rate of unemployment of at least 6.5 percent for the most recent 12 months, as determined by the Secretary. For purposes of this sub-



clause, determinations of areas of substantial unemployment shall be made once each fiscal year.

**(IV) Disadvantaged adult**

Subject to subclause (V), the term “disadvantaged adult” means an adult who received an income, or is a member of a family that received a total family income, that, in relation to family size, does not exceed the higher of—

- (aa) the poverty line; or
- (bb) 70 percent of the lower living standard income level.

**(V) Disadvantaged adult special rule**

The Secretary shall, as appropriate and to the extent practicable, exclude college students and members of the Armed Forces from the determination of the number of disadvantaged adults.

**(VI) Excess number**

The term “excess number” means, used with respect to the excess number of unemployed individuals within a State, the higher of—

- (aa) the number that represents the number of unemployed individuals in excess of 4.5 percent of the civilian labor force in the State; or
- (bb) the number that represents the number of unemployed individuals in excess of 4.5 percent of the civilian labor force in areas of substantial unemployment in such State.

**(2) Dislocated worker employment and training**

**(A) Reservation for outlying areas**

**(i) In general**

From the amount made available under subsection (a)(2)(A) of this section for a fiscal year, the Secretary shall reserve not more than  $\frac{1}{4}$  of 1 percent of the amount appropriated under section 2872(c) of this title for the fiscal year to provide assistance to the outlying areas.

**(ii) Applicability of additional requirements**

From the amount reserved under clause (i), the Secretary shall provide assistance to the outlying areas for dislocated worker employment and training activities and statewide workforce investment activities in accordance with the requirements of section 2852(b)(1)(B) of this title, except that the reference in section 2852(b)(1)(B)(i)(II) of this title to sections 252(a) and 262(a)(1) of the Job Training Partnership Act [29 U.S.C. 1631(a), 1642(a)(1)] shall be deemed to be a reference to section 302(e) of the Job Training Partnership Act [29 U.S.C. 1652(e)] (as in effect on the day before August 7, 1998).

**(B) States**

**(i) In general**

The Secretary shall allot the amount referred to in subsection (a)(2)(B) of this section for a fiscal year to the States pursu-

ant to clause (ii) for dislocated worker employment and training activities and statewide workforce investment activities.

**(ii) Formula**

Of the amount—

(I)  $33\frac{1}{3}$  percent shall be allotted on the basis of the relative number of unemployed individuals in each State, compared to the total number of unemployed individuals in all States;

(II)  $33\frac{1}{3}$  percent shall be allotted on the basis of the relative excess number of unemployed individuals in each State, compared to the total excess number of unemployed individuals in all States; and

(III)  $33\frac{1}{3}$  percent shall be allotted on the basis of the relative number of individuals in each State who have been unemployed for 15 weeks or more, compared to the total number of individuals in all States who have been unemployed for 15 weeks or more.

**(iii) Definition**

In this subparagraph, the term “excess number” means, used with respect to the excess number of unemployed individuals within a State, the number that represents the number of unemployed individuals in excess of 4.5 percent of the civilian labor force in the State.

**(3) Definitions**

For the purpose of the formulas specified in this subsection:

**(A) Freely Associated States**

The term “Freely Associated States” means the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

**(B) Low-income level**

The term “low-income level” means \$7,000 with respect to income in 1969, and for any later year means that amount that bears the same relationship to \$7,000 as the Consumer Price Index for that year bears to the Consumer Price Index for 1969, rounded to the nearest \$1,000.

**(c) Reallotment**

**(1) In general**

The Secretary shall, in accordance with this subsection, reallot to eligible States amounts that are allotted under this section for employment and training activities and statewide workforce investment activities and that are available for reallotment.

**(2) Amount**

The amount available for reallotment for a program year is equal to the amount by which the unobligated balance of the State allotments under this section for such activities, at the end of the program year prior to the program year for which the determination under this paragraph is made, exceeds 20 percent of such allotments for the prior program year.

**(3) Reallotment**

In making reallotments to eligible States of amounts available pursuant to paragraph (2)

for a program year, the Secretary shall allot to each eligible State an amount based on the relative amount allotted to such State under this section for such activities for the prior program year, as compared to the total amount allotted to all eligible States under this section for such activities for such prior program year.

**(4) Eligibility**

For purposes of this subsection, an eligible State means a State that has obligated at least 80 percent of the State allotment under this section for such activities for the program year prior to the program year for which the determination under paragraph (2) is made.

**(5) Procedures**

The Governor of each State shall prescribe uniform procedures for the obligation of funds by local areas within the State in order to avoid the requirement that funds be made available for reallocation under this subsection. The Governor shall further prescribe equitable procedures for making funds available from the State and local areas in the event that a State is required to make funds available for reallocation under this subsection.

(Pub. L. 105-220, title I, § 132, Aug. 7, 1998, 112 Stat. 983.)

REFERENCES IN TEXT

The Job Training Partnership Act, referred to in subsec. (b)(1)(B)(iv)(IV), is Pub. L. 97-300, Oct. 13, 1982, 96 Stat. 1322, as amended. Part A of title II of the Act is classified generally to part A (§1601 et seq.) of subchapter II of chapter 19 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2801, 2822, 2831, 2853, 2854, 2861, 2863, 2864, 2871, 2872, 2915, 2916, 2918, 2932, 2944 of this title.

**§ 2863. Within State allocations**

**(a) Reservations for State activities**

**(1) Statewide workforce investment activities**

The Governor of a State shall make the reservation required under section 2853(a) of this title.

**(2) Statewide rapid response activities**

The Governor of the State shall reserve not more than 25 percent of the total amount allotted to the State under section 2862(b)(2)(B) of this title for a fiscal year for statewide rapid response activities described in section 2864(a)(2)(A) of this title.

**(b) Within State allocation**

**(1) Methods**

The Governor, acting in accordance with the State plan, and after consulting with chief elected officials in the local areas, shall allocate—

(A) the funds that are allotted to the State for adult employment and training activities and statewide workforce investment activities under section 2862(b)(1)(B) of this title and are not reserved under subsection (a)(1)

of this section, in accordance with paragraph (2) or (3); and

(B) the funds that are allotted to the State for dislocated worker employment and training activities under section 2862(b)(2)(B) of this title and are not reserved under paragraph (1) or (2) of subsection (a) of this section, in accordance with paragraph (2).

**(2) Formula allocations**

**(A) Adult employment and training activities**

**(i) Allocation**

In allocating the funds described in paragraph (1)(A) to local areas, a State may allocate—

(I) 33 $\frac{1}{3}$  percent of the funds on the basis described in section 2862(b)(1)(B)(ii)(I) of this title;

(II) 33 $\frac{1}{3}$  percent of the funds on the basis described in section 2862(b)(1)(B)(ii)(II) of this title; and

(III) 33 $\frac{1}{3}$  percent of the funds on the basis described in clauses (ii)(III) and (iii) of section 2862(b)(1)(B) of this title.

**(ii) Minimum percentage**

Effective at the end of the second full fiscal year after the date on which a local area is designated under section 2831 of this title, the local area shall not receive an allocation percentage for a fiscal year that is less than 90 percent of the average allocation percentage of the local area for the 2 preceding fiscal years. Amounts necessary for increasing such allocations to local areas to comply with the preceding sentence shall be obtained by ratably reducing the allocations to be made to other local areas under this subparagraph.

**(iii) Definition**

The term “allocation percentage”, used with respect to fiscal year 2000 or a subsequent fiscal year, means a percentage of the funds referred to in clause (i), received through an allocation made under this subparagraph, for the fiscal year.

**(B) Dislocated worker employment and training activities**

**(i) Formula**

In allocating the funds described in paragraph (1)(B) to local areas, a State shall allocate the funds based on an allocation formula prescribed by the Governor of the State. Such formula may be amended by the Governor not more than once for each program year. Such formula shall utilize the most appropriate information available to the Governor to distribute amounts to address the State's worker readjustment assistance needs.

**(ii) Information**

The information described in clause (i) shall include insured unemployment data, unemployment concentrations, plant closing and mass layoff data, declining industries data, farmer-rancher economic hardship data, and long-term unemployment data.

**(C) Application**

For purposes of carrying out subparagraph (A)—

(i) references in section 2862(b) of this title to a State shall be deemed to be references to a local area;

(ii) references in section 2862(b) of this title to all States shall be deemed to be references to all local areas in the State involved; and

(iii) except as described in clause (i), references in section 2862(b)(1) of this title to the term “excess number” shall be considered to be references to the term as defined in section 2862(b)(1) of this title.

**(3) Adult employment and training discretionary allocations**

In lieu of making the allocation described in paragraph (2)(A), in allocating the funds described in paragraph (1)(A) to local areas, a State may distribute—

(A) a portion equal to not less than 70 percent of the funds in accordance with paragraph (2)(A); and

(B) the remaining portion of the funds on the basis of a formula that—

(i) incorporates additional factors (other than the factors described in paragraph (2)(A)) relating to—

(I) excess poverty in urban, rural, and suburban local areas; and

(II) excess unemployment above the State average in urban, rural, and suburban local areas; and

(ii) was developed by the State board and approved by the Secretary as part of the State plan.

**(4) Transfer authority**

A local board may transfer, if such a transfer is approved by the Governor, not more than 20 percent of the funds allocated to the local area under paragraph (2)(A) or (3), and 20 percent of the funds allocated to the local area under paragraph (2)(B), for a fiscal year between—

(A) adult employment and training activities; and

(B) dislocated worker employment and training activities.

**(5) Allocation**

**(A) In general**

The Governor of the State shall allocate the funds described in paragraph (1) to local areas under paragraphs (2) and (3) for the purpose of providing a single system of employment and training activities for adults and dislocated workers in accordance with subsections (d) and (e) of section 2864 of this title.

**(B) Additional requirements**

**(i) Adults**

Funds allocated under paragraph (2)(A) or (3) shall be used by a local area to contribute proportionately to the costs of the one-stop delivery system described in section 2864(c) of this title in the local area, and to pay for employment and training activities provided to adults in the local area, consistent with section 2864 of this title.

**(ii) Dislocated workers**

Funds allocated under paragraph (2)(B) shall be used by a local area to contribute proportionately to the costs of the one-stop delivery system described in section 2864(c) of this title in the local area, and to pay for employment and training activities provided to dislocated workers in the local area, consistent with section 2864 of this title.

**(c) Reallocation among local areas**

**(1) In general**

The Governor may, in accordance with this subsection, reallocate to eligible local areas within the State amounts that are allocated under paragraph (2)(A) or (3) of subsection (b) of this section for adult employment and training activities and that are available for reallocation.

**(2) Amount**

The amount available for reallocation for a program year is equal to the amount by which the unobligated balance of the local area allocation under paragraph (2)(A) or (3) of subsection (b) of this section for such activities, at the end of the program year prior to the program year for which the determination under this paragraph is made exceeds 20 percent of such allocation for the prior program year.

**(3) Reallocation**

In making reallocations to eligible local areas of amounts available pursuant to paragraph (2) for a program year, the Governor shall allocate to each eligible local area within the State an amount based on the relative amount allocated to such local area under subsection (b)(3) of this section for such activities for the prior program year, as compared to the total amount allocated to all eligible local areas in the State under subsection (b)(3) of this section for such activities for such prior program year. For purposes of this paragraph, local areas that received allocations under subsection (b)(2)(A) of this section for the prior program year shall be treated as if the local areas received allocations under subsection (b)(3) of this section for such year.

**(4) Eligibility**

For purposes of this subsection, an eligible local area means a local area that has obligated at least 80 percent of the local area allocation under paragraph (2)(A) or (3) of subsection (b) of this section for such activities, for the program year prior to the program year for which the determination under paragraph (2) is made.

(Pub. L. 105-220, title I, §133, Aug. 7, 1998, 112 Stat. 987.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 2821, 2822, 2832, 2842, 2853, 2854, 2864, 2916, 2918, 2932 of this title.

**§ 2864. Use of funds for employment and training activities**

**(a) Statewide employment and training activities**

**(1) In general**

Funds reserved by a Governor for a State—

(A) as described in section 2863(a)(2) of this title shall be used to carry out the statewide rapid response activities described in paragraph (2)(A); and

(B) as described in sections 2853(a) and 2863(a)(1) of this title—

(i) shall be used to carry out the statewide employment and training activities described in paragraph (2)(B); and

(ii) may be used to carry out any of the statewide employment and training activities described in paragraph (3),

regardless of whether the funds were allotted to the State under section 2852(b)(1) of this title or under paragraph (1) or (2) of section 2862(b) of this title.

**(2) Required statewide employment and training activities**

**(A) Statewide rapid response activities**

A State shall use funds reserved as described in section 2863(a)(2) of this title to carry out statewide rapid response activities, which shall include—

(i) provision of rapid response activities, carried out in local areas by the State or by an entity designated by the State, working in conjunction with the local boards and the chief elected officials in the local areas; and

(ii) provision of additional assistance to local areas that experience disasters, mass layoffs or plant closings, or other events that precipitate substantial increases in the number of unemployed individuals, carried out in local areas by the State or by an entity designated by the State, working in conjunction with the local boards and the chief elected officials in the local areas.

**(B) Other required statewide employment and training activities**

A State shall use funds reserved as described in sections 2853(a) and 2863(a)(1) of this title (regardless of whether the funds were allotted to the State under section 2852(b)(1) of this title or paragraph (1) or (2) of section 2862(b) of this title) to carry out other statewide employment and training activities, which shall include—

(i) disseminating the State list of eligible providers of training services, including eligible providers of nontraditional training services, information identifying eligible providers of on-the-job training and customized training, and performance information and program cost information, as described in subsections (e) and (h) of section 2842 of this title;

(ii) conducting evaluations, under section 2871(e) of this title, of activities authorized in this section, in coordination with the activities carried out under section 2917 of this title;

(iii) providing incentive grants to local areas for regional cooperation among local boards (including local boards for a designated region as described in section 2831(c) of this title), for local coordination of activities carried out under this Act,

and for exemplary performance by local areas on the local performance measures;

(iv) providing technical assistance to local areas that fail to meet local performance measures;

(v) assisting in the establishment and operation of one-stop delivery systems described in subsection (c) of this section; and

(vi) operating a fiscal and management accountability information system under section 2871(f) of this title.

**(3) Allowable statewide employment and training activities**

**(A) In general**

A State may use funds reserved as described in sections 2853(a) and 2863(a)(1) of this title (regardless of whether the funds were allotted to the State under section 2852(b)(1) of this title or paragraph (1) or (2) of section 2862(b) of this title) to carry out additional statewide employment and training activities, which may include—

(i) subject to subparagraph (B), administration by the State of the activities authorized under this section;

(ii) provision of capacity building and technical assistance to local areas, one-stop operators, one-stop partners, and eligible providers, including the development and training of staff and the development of exemplary program activities;

(iii) conduct of research and demonstrations;

(iv)(I) implementation of innovative incumbent worker training programs, which may include the establishment and implementation of an employer loan program to assist in skills upgrading; and

(II) the establishment and implementation of programs targeted to empowerment zones and enterprise communities;

(v) support for the identification of eligible providers of training services as required under section 2842 of this title;

(vi)(I) implementation of innovative programs for displaced homemakers, which for purposes of this subclause may include an individual who is receiving public assistance and is within 2 years of exhausting lifetime eligibility under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.); and

(II) implementation of programs to increase the number of individuals training for and placed in nontraditional employment; and

(vii) carrying out other activities authorized in this section that the State determines to be necessary to assist local areas in carrying out activities described in subsection (d) or (e) of this section through the statewide workforce investment system.

**(B) Limitation**

**(i) In general**

Of the funds allotted to a State under sections 2852(b) and 2862(b) of this title and reserved as described in sections 2853(a)

and 2863(a)(1) of this title for a fiscal year—

(I) not more than 5 percent of the amount allotted under section 2852(b)(1) of this title;

(II) not more than 5 percent of the amount allotted under section 2862(b)(1) of this title; and

(III) not more than 5 percent of the amount allotted under section 2862(b)(2) of this title,

may be used by the State for the administration of youth activities carried out under section 2854 of this title and employment and training activities carried out under this section.

**(ii) Use of funds**

Funds made available for administrative costs under clause (i) may be used for the administrative cost of any of the statewide youth activities or statewide employment and training activities, regardless of whether the funds were allotted to the State under section 2852(b)(1) of this title or paragraph (1) or (2) of section 2862(b) of this title.

**(b) Local employment and training activities**

Funds allocated to a local area for adults under paragraph (2)(A) or (3), as appropriate, of section 2863(b) of this title, and funds allocated to a local area for dislocated workers under section 2863(b)(2)(B) of this title—

(1) shall be used to carry out employment and training activities described in subsection (d) of this section for adults or dislocated workers, respectively; and

(2) may be used to carry out employment and training activities described in subsection (e) of this section for adults or dislocated workers, respectively.

**(c) Establishment of one-stop delivery system**

**(1) In general**

There shall be established in a State that receives an allotment under section 2862(b) of this title a one-stop delivery system, which—

(A) shall provide the core services described in subsection (d)(2) of this section;

(B) shall provide access to intensive services and training services as described in paragraphs (3) and (4) of subsection (d) of this section, including serving as the point of access to individual training accounts for training services to participants in accordance with subsection (d)(4)(G) of this section;

(C) shall provide access to the activities carried out under subsection (e) of this section, if any;

(D) shall provide access to programs and activities carried out by one-stop partners and described in section 2841(b) of this title; and

(E) shall provide access to the information described in section 15 of the Wagner-Peyser Act [29 U.S.C. 491–2] and all job search, placement, recruitment, and other labor exchange services authorized under the Wagner-Peyser Act (29 U.S.C. 49 et seq.).

**(2) One-stop delivery**

At a minimum, the one-stop delivery system—

(A) shall make each of the programs, services, and activities described in paragraph (1) accessible at not less than one physical center in each local area of the State; and

(B) may also make programs, services, and activities described in paragraph (1) available—

(i) through a network of affiliated sites that can provide one or more of the programs, services, and activities to individuals; and

(ii) through a network of eligible one-stop partners—

(I) in which each partner provides one or more of the programs, services, and activities to such individuals and is accessible at an affiliated site that consists of a physical location or an electronically or technologically linked access point; and

(II) that assures individuals that information on the availability of the core services will be available regardless of where the individuals initially enter the statewide workforce investment system, including information made available through an access point described in subclause (I).

**(3) Specialized centers**

The centers and sites described in paragraph (2) may have a specialization in addressing special needs, such as the needs of dislocated workers.

**(d) Required local employment and training activities**

**(1) In general**

**(A) Allocated funds**

Funds allocated to a local area for adults under paragraph (2)(A) or (3), as appropriate, of section 2863(b) of this title, and funds allocated to the local area for dislocated workers under section 2863(b)(2)(B) of this title, shall be used—

(i) to establish a one-stop delivery system described in subsection (c) of this section;

(ii) to provide the core services described in paragraph (2) to adults and dislocated workers, respectively, through the one-stop delivery system in accordance with such paragraph;

(iii) to provide the intensive services described in paragraph (3) to adults and dislocated workers, respectively, described in such paragraph; and

(iv) to provide training services described in paragraph (4) to adults and dislocated workers, respectively, described in such paragraph.

**(B) Other funds**

A portion of the funds made available under Federal law authorizing the programs and activities described in section 2841(b)(1)(B) of this title, including the Wagner-Peyser Act (29 U.S.C. 49 et seq.), shall be

used as described in clauses (i) and (ii) of subparagraph (A), to the extent not inconsistent with the Federal law involved.

**(2) Core services**

Funds described in paragraph (1)(A) shall be used to provide core services, which shall be available to individuals who are adults or dislocated workers through the one-stop delivery system and shall, at a minimum, include—

(A) determinations of whether the individuals are eligible to receive assistance under this subchapter;

(B) outreach, intake (which may include worker profiling), and orientation to the information and other services available through the one-stop delivery system;

(C) initial assessment of skill levels, aptitudes, abilities, and supportive service needs;

(D) job search and placement assistance, and where appropriate, career counseling;

(E) provision of employment statistics information, including the provision of accurate information relating to local, regional, and national labor market areas, including—

(i) job vacancy listings in such labor market areas;

(ii) information on job skills necessary to obtain the jobs described in clause (i); and

(iii) information relating to local occupations in demand and the earnings and skill requirements for such occupations; and

(F) provision of performance information and program cost information on eligible providers of training services as described in section 2842 of this title, provided by program, and eligible providers of youth activities described in section 2843 of this title, providers of adult education described in title II [20 U.S.C. 9201 et seq.], providers of postsecondary vocational education activities and vocational education activities available to school dropouts under the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.), and providers of vocational rehabilitation program activities described in title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.);

(G) provision of information regarding how the local area is performing on the local performance measures and any additional performance information with respect to the one-stop delivery system in the local area;

(H) provision of accurate information relating to the availability of supportive services, including child care and transportation, available in the local area, and referral to such services, as appropriate;

(I) provision of information regarding filing claims for unemployment compensation;

(J) assistance in establishing eligibility for—

(i) welfare-to-work activities authorized under section 403(a)(5) of the Social Security Act [42 U.S.C. 603(a)(5)] (as added by section 5001 of the Balanced Budget Act of 1997) available in the local area; and

(ii) programs of financial aid assistance for training and education programs that are not funded under this Act and are available in the local area; and

(K) followup services, including counseling regarding the workplace, for participants in workforce investment activities authorized under this subchapter who are placed in unsubsidized employment, for not less than 12 months after the first day of the employment, as appropriate.

**(3) Intensive services**

**(A) In general**

Funds allocated to a local area for adults under paragraph (2)(A) or (3), as appropriate, of section 2863(b) of this title, and funds allocated to the local area for dislocated workers under section 2863(b)(2)(B) of this title, shall be used to provide intensive services to adults and dislocated workers, respectively—

(i) (I) who are unemployed and are unable to obtain employment through core services provided under paragraph (2); and

(II) who have been determined by a one-stop operator to be in need of more intensive services in order to obtain employment; or

(ii) who are employed, but who are determined by a one-stop operator to be in need of such intensive services in order to obtain or retain employment that allows for self-sufficiency.

**(B) Delivery of services**

Such intensive services shall be provided through the one-stop delivery system—

(i) directly through one-stop operators identified pursuant to section 2841(d) of this title; or

(ii) through contracts with service providers, which may include contracts with public, private for-profit, and private non-profit service providers, approved by the local board.

**(C) Types of services**

Such intensive services may include the following:

(i) Comprehensive and specialized assessments of the skill levels and service needs of adults and dislocated workers, which may include—

(I) diagnostic testing and use of other assessment tools; and

(II) in-depth interviewing and evaluation to identify employment barriers and appropriate employment goals.

(ii) Development of an individual employment plan, to identify the employment goals, appropriate achievement objectives, and appropriate combination of services for the participant to achieve the employment goals.

(iii) Group counseling.

(iv) Individual counseling and career planning.

(v) Case management for participants seeking training services under paragraph (4).

(vi) Short-term prevocational services, including development of learning skills, communication skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct, to prepare individuals for unsubsidized employment or training.

#### **(4) Training services**

##### **(A) In general**

Funds allocated to a local area for adults under paragraph (2)(A) or (3), as appropriate, of section 2863(b) of this title, and funds allocated to a local area for dislocated workers under section 2863(b)(2)(B) of this title shall be used to provide training services to adults and dislocated workers, respectively—

(i) who have met the eligibility requirements for intensive services under paragraph (3)(A) and who are unable to obtain or retain employment through such services;

(ii) who after an interview, evaluation, or assessment, and case management, have been determined by a one-stop operator or one-stop partner, as appropriate, to be in need of training services and to have the skills and qualifications to successfully participate in the selected program of training services;

(iii) who select programs of training services that are directly linked to the employment opportunities in the local area involved or in another area in which the adults or dislocated workers receiving such services are willing to relocate;

(iv) who meet the requirements of subparagraph (B); and

(v) who are determined to be eligible in accordance with the priority system, if any, in effect under subparagraph (E).

##### **(B) Qualification**

###### **(i) Requirement**

Except as provided in clause (ii), provision of such training services shall be limited to individuals who—

(I) are unable to obtain other grant assistance for such services, including Federal Pell Grants established under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq. [and 42 U.S.C. 2751 et seq.]); or

(II) require assistance beyond the assistance made available under other grant assistance programs, including Federal Pell Grants.

###### **(ii) Reimbursements**

Training services may be provided under this paragraph to an individual who otherwise meets the requirements of this paragraph while an application for a Federal Pell Grant is pending, except that if such individual is subsequently awarded a Federal Pell Grant, appropriate reimbursement shall be made to the local area from such Federal Pell Grant.

##### **(C) Provider qualification**

Training services shall be provided through providers identified in accordance with section 2842 of this title.

#### **(D) Training services**

Training services may include—

(i) occupational skills training, including training for nontraditional employment;

(ii) on-the-job training;

(iii) programs that combine workplace training with related instruction, which may include cooperative education programs;

(iv) training programs operated by the private sector;

(v) skill upgrading and retraining;

(vi) entrepreneurial training;

(vii) job readiness training;

(viii) adult education and literacy activities provided in combination with services described in any of clauses (i) through (vii); and

(ix) customized training conducted with a commitment by an employer or group of employers to employ an individual upon successful completion of the training.

#### **(E) Priority**

In the event that funds allocated to a local area for adult employment and training activities under paragraph (2)(A) or (3) of section 2863(b) of this title are limited, priority shall be given to recipients of public assistance and other low-income individuals for intensive services and training services. The appropriate local board and the Governor shall direct the one-stop operators in the local area with regard to making determinations related to such priority.

#### **(F) Consumer choice requirements**

##### **(i) In general**

Training services provided under this paragraph shall be provided in a manner that maximizes consumer choice in the selection of an eligible provider of such services.

##### **(ii) Eligible providers**

Each local board, through one-stop centers referred to in subsection (c) of this section, shall make available—

(I) the State list of eligible providers of training services required under section 2842(e) of this title, with a description of the programs through which the providers may offer the training services, and the information identifying eligible providers of on-the-job training and customized training required under section 2842(h) of this title; and

(II) the performance information and performance cost information relating to eligible providers of training services described in subsections (e) and (h) of section 2842 of this title.

##### **(iii) Individual training accounts**

An individual who seeks training services and who is eligible pursuant to subparagraph (A), may, in consultation with a case manager, select an eligible provider of training services from the list or identifying information for providers described in clause (ii)(I). Upon such selection, the one-

stop operator involved shall, to the extent practicable, refer such individual to the eligible provider of training services, and arrange for payment for such services through an individual training account.

**(G) Use of individual training accounts**

**(i) In general**

Except as provided in clause (ii), training services provided under this paragraph shall be provided through the use of individual training accounts in accordance with this paragraph, and shall be provided to eligible individuals through the one-stop delivery system.

**(ii) Exceptions**

Training services authorized under this paragraph may be provided pursuant to a contract for services in lieu of an individual training account if the requirements of subparagraph (F) are met and if—

(I) such services are on-the-job training provided by an employer or customized training;

(II) the local board determines there are an insufficient number of eligible providers of training services in the local area involved (such as in a rural area) to accomplish the purposes of a system of individual training accounts; or

(III) the local board determines that there is a training services program of demonstrated effectiveness offered in the local area by a community-based organization or another private organization to serve special participant populations that face multiple barriers to employment.

**(iii) Linkage to occupations in demand**

Training services provided under this paragraph shall be directly linked to occupations that are in demand in the local area, or in another area to which an adult or dislocated worker receiving such services is willing to relocate, except that a local board may approve training services for occupations determined by the local board to be in sectors of the economy that have a high potential for sustained demand or growth in the local area.

**(iv) Definition**

In this subparagraph, the term “special participant population that faces multiple barriers to employment” means a population of low-income individuals that is included in one or more of the following categories:

(I) Individuals with substantial language or cultural barriers.

(II) Offenders.

(III) Homeless individuals.

(IV) Other hard-to-serve populations as defined by the Governor involved.

**(e) Permissible local employment and training activities**

**(1) Discretionary one-stop delivery activities**

Funds allocated to a local area for adults under paragraph (2)(A) or (3), as appropriate,

of section 2863(b) of this title, and funds allocated to the local area for dislocated workers under section 2863(b)(2)(B) of this title, may be used to provide, through one-stop delivery described in subsection (c)(2) of this section—

(A) customized screening and referral of qualified participants in training services described in subsection (d)(4) of this section to employment; and

(B) customized employment-related services to employers on a fee-for-service basis.

**(2) Supportive services**

Funds allocated to a local area for adults under paragraph (2)(A) or (3), as appropriate, of section 2863(b) of this title, and funds allocated to the local area for dislocated workers under section 2863(b)(2)(B) of this title, may be used to provide supportive services to adults and dislocated workers, respectively—

(A) who are participating in programs with activities authorized in any of paragraphs (2), (3), or (4) of subsection (d) of this section; and

(B) who are unable to obtain such supportive services through other programs providing such services.

**(3) Needs-related payments**

**(A) In general**

Funds allocated to a local area for adults under paragraph (2)(A) or (3), as appropriate, of section 2863(b) of this title, and funds allocated to the local area for dislocated workers under section 2863(b)(2)(B) of this title, may be used to provide needs-related payments to adults and dislocated workers, respectively, who are unemployed and do not qualify for (or have ceased to qualify for) unemployment compensation for the purpose of enabling such individuals to participate in programs of training services under subsection (d)(4) of this section.

**(B) Additional eligibility requirements**

In addition to the requirements contained in subparagraph (A), a dislocated worker who has ceased to qualify for unemployment compensation may be eligible to receive needs-related payments under this paragraph only if such worker was enrolled in the training services—

(i) by the end of the 13th week after the most recent layoff that resulted in a determination of the worker’s eligibility for employment and training activities for dislocated workers under this subchapter; or

(ii) if later, by the end of the 8th week after the worker is informed that a short-term layoff will exceed 6 months.

**(C) Level of payments**

The level of a needs-related payment made to a dislocated worker under this paragraph shall not exceed the greater of—

(i) the applicable level of unemployment compensation; or

(ii) if such worker did not qualify for unemployment compensation, an amount equal to the poverty line, for an equivalent period, which amount shall be adjusted to reflect changes in total family income.



(Pub. L. 105-220, title I, §134, Aug. 7, 1998, 112 Stat. 990; Pub. L. 105-277, div. A, §101(f) [title VIII, §401(5)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-411.)

#### REFERENCES IN TEXT

This Act, referred to in subsecs. (a)(2)(B)(iii) and (d)(2)(J)(ii), is Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 936, as amended, known as the Workforce Investment Act of 1998. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

The Social Security Act, referred to in subsec. (a)(3)(A)(vi)(I), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Act is classified generally to part A (§601 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Wagner-Peyser Act, referred to in subsecs. (c)(1)(E) and (d)(1)(B), is act June 6, 1933, ch. 49, 48 Stat. 113, as amended, which is classified generally to chapter 4B (§49 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 49 of this title and Tables.

Title II, referred to in subsec. (d)(2)(F), is title II of Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 1059, as amended, known as the Adult Education and Family Literacy Act, which is classified principally to subchapter I (§9201 et seq.) of chapter 73 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20 and Tables.

The Carl D. Perkins Vocational and Applied Technology Education Act, referred to in subsec. (d)(2)(F), is Pub. L. 88-210, Dec. 18, 1963, 77 Stat. 403, as amended, which was classified generally to chapter 44 (§2301 et seq.) of Title 20, Education, prior to being amended generally and renamed the Carl D. Perkins Vocational and Technical Education Act of 1998 by Pub. L. 105-332, §1(b), Oct. 31, 1998, 112 Stat. 3076. For complete classification of Pub. L. 88-210 to the Code, see Short Title note set out under section 2301 of Title 20 and Tables.

The Rehabilitation Act of 1973, referred to in subsec. (d)(2)(F), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, as amended. Title I of the Act is classified generally to subchapter I (§720 et seq.) of chapter 16 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 701 of this title and Tables.

The Higher Education Act of 1965, referred to in subsec. (d)(4)(B)(i)(I), is Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1219, as amended. Title IV of the Act is classified generally to subchapter IV (§1070 et seq.) of chapter 28 of Title 20, Education, and part C (§2751 et seq.) of subchapter I of chapter 34 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

#### AMENDMENTS

1998—Subsec. (d)(4)(F)(iii). Pub. L. 105-277 added cl. (iii).

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 49a, 49l-2, 772, 2102, 2801, 2821, 2822, 2832, 2841, 2842, 2853, 2854, 2863, 2871, 2888, 2913, 2918, 2931, 2934, 2944 of this title; title 5 section 3502; title 42 section 3056h.

#### PART F—GENERAL PROVISIONS

### § 2871. Performance accountability system

#### (a) Purpose

The purpose of this section is to establish a comprehensive performance accountability system, comprised of the activities described in

this section, to assess the effectiveness of States and local areas in achieving continuous improvement of workforce investment activities funded under this subchapter, in order to optimize the return on investment of Federal funds in statewide and local workforce investment activities.

#### (b) State performance measures

##### (1) In general

For each State, the State performance measures shall consist of—

(A)(i) the core indicators of performance described in paragraph (2)(A) and the customer satisfaction indicator of performance described in paragraph (2)(B); and

(ii) additional indicators of performance (if any) identified by the State under paragraph (2)(C); and

(B) a State adjusted level of performance for each indicator described in subparagraph (A).

##### (2) Indicators of performance

##### (A) Core indicators of performance

##### (i) In general

The core indicators of performance for employment and training activities authorized under section 2864 of this title (except for self-service and informational activities) and (for participants who are eligible youth age 19 through 21) for youth activities authorized under section 2854 of this title shall consist of—

(I) entry into unsubsidized employment;

(II) retention in unsubsidized employment 6 months after entry into the employment;

(III) earnings received in unsubsidized employment 6 months after entry into the employment; and

(IV) attainment of a recognized credential relating to achievement of educational skills, which may include attainment of a secondary school diploma or its recognized equivalent, or occupational skills, by participants who enter unsubsidized employment, or by participants who are eligible youth age 19 through 21 who enter postsecondary education, advanced training, or unsubsidized employment.

##### (ii) Core indicators for eligible youth

The core indicators of performance (for participants who are eligible youth age 14 through 18) for youth activities authorized under section 2854 of this title, shall include—

(I) attainment of basic skills and, as appropriate, work readiness or occupational skills;

(II) attainment of secondary school diplomas and their recognized equivalents; and

(III) placement and retention in postsecondary education or advanced training, or placement and retention in military service, employment, or qualified apprenticeships.

**(B) Customer satisfaction indicators**

The customer satisfaction indicator of performance shall consist of customer satisfaction of employers and participants with services received from the workforce investment activities authorized under this subchapter. Customer satisfaction may be measured through surveys conducted after the conclusion of participation in the workforce investment activities.

**(C) Additional indicators**

A State may identify in the State plan additional indicators for workforce investment activities authorized under this subchapter.

**(3) Levels of performance****(A) State adjusted levels of performance for core indicators and customer satisfaction indicator****(i) In general**

For each State submitting a State plan, there shall be established, in accordance with this subparagraph, levels of performance for each of the core indicators of performance described in paragraph (2)(A) and the customer satisfaction indicator described in paragraph (2)(B) for workforce investment activities authorized under this subchapter. The levels of performance established under this subparagraph shall, at a minimum—

(I) be expressed in an objective, quantifiable, and measurable form; and

(II) show the progress of the State toward continuously improving in performance.

**(ii) Identification in State plan**

Each State shall identify, in the State plan submitted under section 2822 of this title, expected levels of performance for each of the core indicators of performance and the customer satisfaction indicator of performance, for the first 3 program years covered by the State plan.

**(iii) Agreement on State adjusted levels of performance for first 3 years**

In order to ensure an optimal return on the investment of Federal funds in workforce investment activities authorized under this subchapter, the Secretary and each Governor shall reach agreement on levels of performance for each of the core indicators of performance and the customer satisfaction indicator of performance, for the first 3 program years covered by the State plan, taking into account the levels identified in the State plan under clause (ii) and the factors described in clause (iv). The levels agreed to under this clause shall be considered to be the State adjusted levels of performance for the State for such years and shall be incorporated into the State plan prior to the approval of such plan.

**(iv) Factors**

The agreement described in clause (iii) or (v) shall take into account—

(I) the extent to which the levels involved will assist the State in attaining a high level of customer satisfaction;

(II) how the levels involved compare with the State adjusted levels of performance established for other States, taking into account factors including differences in economic conditions, the characteristics of participants when the participants entered the program, and the services to be provided; and

(III) the extent to which such levels involved promote continuous improvement in performance on the performance measures by such State and ensure optimal return on the investment of Federal funds.

**(v) Agreement on State adjusted levels of performance for 4th and 5th years**

Prior to the 4th program year covered by the State plan, the Secretary and each Governor shall reach agreement on levels of performance for each of the core indicators of performance and the customer satisfaction indicator of performance, for the 4th and 5th program years covered by the State plan, taking into account the factors described in clause (iv). The levels agreed to under this clause shall be considered to be the State adjusted levels of performance for the State for such years and shall be incorporated into the State plan.

**(vi) Revisions**

If unanticipated circumstances arise in a State resulting in a significant change in the factors described in clause (iv)(II), the Governor may request that the State adjusted levels of performance agreed to under clause (iii) or (v) be revised. The Secretary, after collaboration with the representatives described in subsection (i) of this section, shall issue objective criteria and methods for making such revisions.

**(B) Levels of performance for additional indicators**

The State may identify, in the State plan, State levels of performance for each of the additional indicators described in paragraph (2)(C). Such levels shall be considered to be State adjusted levels of performance for purposes of this chapter.

**(c) Local performance measures****(1) In general**

For each local area in a State, the local performance measures shall consist of—

(A)(i) the core indicators of performance described in subsection (b)(2)(A) of this section, and the customer satisfaction indicator of performance described in subsection (b)(2)(B) of this section, for activities described in such subsections, other than statewide workforce investment activities; and

(ii) additional indicators of performance (if any) identified by the State under subsection (b)(2)(C) of this section for activities described in such subsection, other than statewide workforce investment activities; and

(B) a local level of performance for each indicator described in subparagraph (A).

## **(2) Local level of performance**

The local board, the chief elected official, and the Governor shall negotiate and reach agreement on the local levels of performance based on the State adjusted levels of performance established under subsection (b) of this section.

## **(3) Determinations**

In determining such local levels of performance, the local board, the chief elected official, and the Governor shall take into account the specific economic, demographic, and other characteristics of the populations to be served in the local area.

## **(d) Report**

### **(1) In general**

Each State that receives an allotment under section 2852 or 2862 of this title shall annually prepare and submit to the Secretary a report on the progress of the State in achieving State performance measures, including information on the levels of performance achieved by the State with respect to the core indicators of performance and the customer satisfaction indicator. The annual report also shall include information regarding the progress of local areas in the State in achieving local performance measures, including information on the levels of performance achieved by the areas with respect to the core indicators of performance and the customer satisfaction indicator. The report also shall include information on the status of State evaluations of workforce investment activities described in subsection (e) of this section.

### **(2) Additional information**

In preparing such report, the State shall include, at a minimum, information on participants in workforce investment activities authorized under this subchapter relating to—

(A) entry by participants who have completed training services provided under section 2864(d)(4) of this title into unsubsidized employment related to the training received;

(B) wages at entry into employment for participants in workforce investment activities who entered unsubsidized employment, including the rate of wage replacement for such participants who are dislocated workers;

(C) cost of workforce investment activities relative to the effect of the activities on the performance of participants;

(D) retention and earnings received in unsubsidized employment 12 months after entry into the employment;

(E) performance with respect to the indicators of performance specified in subsection (b)(2)(A) of this section of participants in workforce investment activities who received the training services compared with the performance of participants in workforce investment activities who received only services other than the training services (excluding participants who received only self-service and informational activities); and

(F) performance with respect to the indicators of performance specified in subsection

(b)(2)(A) of this section of recipients of public assistance, out-of-school youth, veterans, individuals with disabilities, displaced homemakers, and older individuals.

## **(3) Information dissemination**

The Secretary—

(A) shall make the information contained in such reports available to the general public through publication and other appropriate methods;

(B) shall disseminate State-by-State comparisons of the information; and

(C) shall provide the appropriate congressional committees with copies of such reports.

## **(e) Evaluation of State programs**

### **(1) In general**

Using funds made available under this subchapter, the State, in coordination with local boards in the State, shall conduct ongoing evaluation studies of workforce investment activities carried out in the State under this subchapter in order to promote, establish, implement, and utilize methods for continuously improving the activities in order to achieve high-level performance within, and high-level outcomes from, the statewide workforce investment system. To the maximum extent practicable, the State shall coordinate the evaluations with the evaluations provided for by the Secretary under section 2917 of this title.

### **(2) Design**

The evaluation studies conducted under this subsection shall be designed in conjunction with the State board and local boards and shall include analysis of customer feedback and outcome and process measures in the statewide workforce investment system. The studies may include use of control groups.

### **(3) Results**

The State shall periodically prepare and submit to the State board, and local boards in the State, reports containing the results of evaluation studies conducted under this subsection, to promote the efficiency and effectiveness of the statewide workforce investment system in improving employability for jobseekers and competitiveness for employers.

## **(f) Fiscal and management accountability information systems**

### **(1) In general**

Using funds made available under this subchapter, the Governor, in coordination with local boards and chief elected officials in the State, shall establish and operate a fiscal and management accountability information system based on guidelines established by the Secretary after consultation with the Governors, local elected officials, and one-stop partners. Such guidelines shall promote efficient collection and use of fiscal and management information for reporting and monitoring the use of funds made available under this subchapter and for preparing the annual report described in subsection (d) of this section.

### **(2) Wage records**

In measuring the progress of the State on State and local performance measures, a State

shall utilize quarterly wage records, consistent with State law. The Secretary shall make arrangements, consistent with State law, to ensure that the wage records of any State are available to any other State to the extent that such wage records are required by the State in carrying out the State plan of the State or completing the annual report described in subsection (d) of this section.

**(3) Confidentiality**

In carrying out the requirements of this Act, the State shall comply with section 1232g of title 20.

**(g) Sanctions for State failure to meet State performance measures**

**(1) States**

**(A) Technical assistance**

If a State fails to meet State adjusted levels of performance relating to indicators described in subparagraph (A) or (B) of subsection (b)(2) of this section for a program for any program year, the Secretary shall, upon request, provide technical assistance in accordance with section 2915 of this title, including assistance in the development of a performance improvement plan.

**(B) Reduction in amount of grant**

If such failure continues for a second consecutive year, or if a State fails to submit a report under subsection (d) of this section for any program year, the Secretary may reduce by not more than 5 percent, the amount of the grant that would (in the absence of this paragraph) be payable to the State under such program for the immediately succeeding program year. Such penalty shall be based on the degree of failure to meet State adjusted levels of performance.

**(2) Funds resulting from reduced allotments**

The Secretary shall use an amount retained, as a result of a reduction in an allotment to a State made under paragraph (1)(B), to provide incentive grants under section 9273 of title 20.

**(h) Sanctions for local area failure to meet local performance measures**

**(1) Technical assistance**

If a local area fails to meet levels of performance relating to indicators described in subparagraph (A) or (B) of subsection (b)(2) of this section for a program for any program year, the Governor, or upon request by the Governor, the Secretary, shall provide technical assistance, which may include assistance in the development of a performance improvement plan, or the development of a modified local plan.

**(2) Corrective actions**

**(A) In general**

If such failure continues for a second consecutive year, the Governor shall take corrective actions, which may include development of a reorganization plan through which the Governor may—

- (i) require the appointment and certification of a new local board (consistent with the criteria established under section 2832(b) of this title);

- (ii) prohibit the use of eligible providers and one-stop partners identified as achieving a poor level of performance; or

- (iii) take such other actions as the Governor determines are appropriate.

**(B) Appeal by local area**

**(i) Appeal to Governor**

A local area that is subject to a reorganization plan under subparagraph (A) may, not later than 30 days after receiving notice of the reorganization plan, appeal to the Governor to rescind or revise such plan. In such case, the Governor shall make a final decision not later than 30 days after the receipt of the appeal.

**(ii) Subsequent action**

The local area may, not later than 30 days after receiving a decision from the Governor pursuant to clause (i), appeal such decision to the Secretary. In such case, the Secretary shall make a final decision not later than 30 days after the receipt of the appeal.

**(C) Effective date**

The decision made by the Governor under clause (i) of subparagraph (B) shall become effective at the time the Governor issues the decision pursuant to such clause. Such decision shall remain effective unless the Secretary rescinds or revises such plan pursuant to clause (ii) of subparagraph (B).

**(i) Other measures and terminology**

**(1) Responsibilities**

In order to ensure nationwide comparability of performance data, the Secretary, after collaboration with representatives of appropriate Federal agencies, and representatives of States and political subdivisions, business and industry, employees, eligible providers of employment and training activities, educators, and participants, with expertise regarding workforce investment policies and workforce investment activities, shall issue—

- (A) definitions for information required to be reported under subsection (d)(2) of this section;

- (B) terms for a menu of additional indicators of performance described in subsection (b)(2)(C) of this section to assist States in assessing their progress toward State workforce investment goals; and

- (C) objective criteria and methods described in subsection (b)(3)(A)(vi) of this section for making revisions to levels of performance.

**(2) Definitions for core indicators**

The Secretary and the representatives described in paragraph (1) shall participate in the activities described in section 9272 of title 20 concerning the issuance of definitions for indicators of performance described in subsection (b)(2)(A) of this section.

**(3) Assistance**

The Secretary shall make the services of staff available to the representatives to assist the representatives in participating in the col-

laboration described in paragraph (1) and in the activities described in section 9272 of title 20.

(Pub. L. 105-220, title I, §136, Aug. 7, 1998, 112 Stat. 999.)

#### REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(3)(B), was in the original “this title” meaning title I of Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 939, as amended, which enacted this chapter, repealed sections 1501 to 1505, 1511 to 1583, 1592 to 1735, 1737 to 1791h, 1792 to 1792b, 2301 to 2314 of this title, section 211 of Title 40, Appendix, Public Buildings, Property, and Works, sections 11421, 11441 to 11447, 11449, 11450, 11461 to 11466, 11471, and 11472 of Title 42, The Public Health and Welfare, and sections 42101 to 42106 of Title 49, Transportation, enacted provisions set out as notes under sections 1501, 2301, and 2940 of this title and section 11421 of Title 42, and repealed provisions set out as notes under sections 801 and 2301 of this title and section 1255a of Title 8, Aliens and Nationality. For complete classification of title I to the Code, see Tables.

This Act, referred to in subsec. (f)(3), is Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 936, as amended, known as the Workforce Investment Act of 1998. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 491-2, 710, 721, 726, 2801, 2821, 2822, 2832, 2833, 2842, 2864, 2899, 2914, 2915, 2917 of this title; title 20 section 9212.

### § 2872. Authorization of appropriations

#### (a) Youth activities

There are authorized to be appropriated to carry out the activities described in section 2852(a) of this title, such sums as may be necessary for each of fiscal years 1999 through 2003.

#### (b) Adult employment and training activities

There are authorized to be appropriated to carry out the activities described in section 2862(a)(1) of this title, such sums as may be necessary for each of fiscal years 1999 through 2003.

#### (c) Dislocated worker employment and training activities

There are authorized to be appropriated to carry out the activities described in section 2862(a)(2) of this title, such sums as may be necessary for each of fiscal years 1999 through 2003.

(Pub. L. 105-220, title I, §137, Aug. 7, 1998, 112 Stat. 1006.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2852, 2862 of this title.

### SUBCHAPTER III—JOB CORPS

#### SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 2801 of this title; title 20 section 9274; title 42 section 3796ee.

### § 2881. Purposes

The purposes of this subchapter are—

(1) to maintain a national Job Corps program, carried out in partnership with States and communities, to assist eligible youth who need and can benefit from an intensive pro-

gram, operated in a group setting in residential and nonresidential centers, to become more responsible, employable, and productive citizens;

(2) to set forth standards and procedures for selecting individuals as enrollees in the Job Corps;

(3) to authorize the establishment of Job Corps centers in which enrollees will participate in intensive programs of activities described in this subchapter; and

(4) to prescribe various other powers, duties, and responsibilities incident to the operation and continuing development of the Job Corps.

(Pub. L. 105-220, title I, §141, Aug. 7, 1998, 112 Stat. 1006.)

### § 2882. Definitions

In this subchapter:

#### (1) Applicable local board

The term “applicable local board” means a local board—

(A) that provides information for a Job Corps center on local employment opportunities and the job skills needed to obtain the opportunities; and

(B) that serves communities in which the graduates of the Job Corps center seek employment.

#### (2) Applicable one-stop center

The term “applicable one-stop center” means a one-stop customer service center that provides services, such as referral, intake, recruitment, and placement, to a Job Corps center.

#### (3) Enrollee

The term “enrollee” means an individual who has voluntarily applied for, been selected for, and enrolled in the Job Corps program, and remains with the program, but has not yet become a graduate.

#### (4) Former enrollee

The term “former enrollee” means an individual who has voluntarily applied for, been selected for, and enrolled in the Job Corps program, but left the program before completing the requirements of a vocational training program, or receiving a secondary school diploma or recognized equivalent, as a result of participation in the Job Corps program.

#### (5) Graduate

The term “graduate” means an individual who has voluntarily applied for, been selected for, and enrolled in the Job Corps program and has completed the requirements of a vocational training program, or received a secondary school diploma or recognized equivalent, as a result of participation in the Job Corps program.

#### (6) Job Corps

The term “Job Corps” means the Job Corps described in section 2883 of this title.

#### (7) Job Corps center

The term “Job Corps center” means a center described in section 2887 of this title.

**(8) Operator**

The term “operator” means an entity selected under this subchapter to operate a Job Corps center.

**(9) Region**

The term “region” means an area served by a regional office of the Employment and Training Administration.

**(10) Service provider**

The term “service provider” means an entity selected under this subchapter to provide services described in this subchapter to a Job Corps center.

(Pub. L. 105–220, title I, §142, Aug. 7, 1998, 112 Stat. 1006.)

**§ 2883. Establishment**

There shall be within the Department of Labor a “Job Corps”.

(Pub. L. 105–220, title I, §143, Aug. 7, 1998, 112 Stat. 1007.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 2882 of this title.

**§ 2884. Individuals eligible for the Job Corps**

To be eligible to become an enrollee, an individual shall be—

(1) not less than age 16 and not more than age 21 on the date of enrollment, except that—

(A) not more than 20 percent of the individuals enrolled in the Job Corps may be not less than age 22 and not more than age 24 on the date of enrollment; and

(B) either such maximum age limitation may be waived by the Secretary, in accordance with regulations of the Secretary, in the case of an individual with a disability;

(2) a low-income individual; and

(3) an individual who is one or more of the following:

(A) Basic skills deficient.

(B) A school dropout.

(C) Homeless, a runaway, or a foster child.

(D) A parent.

(E) An individual who requires additional education, vocational training, or intensive counseling and related assistance, in order to participate successfully in regular schoolwork or to secure and hold employment.

(Pub. L. 105–220, title I, §144, Aug. 7, 1998, 112 Stat. 1007.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in title 42 section 12653c.

**§ 2885. Recruitment, screening, selection, and assignment of enrollees****(a) Standards and procedures****(1) In general**

The Secretary shall prescribe specific standards and procedures for the recruitment, screening, and selection of eligible applicants for the Job Corps, after considering recommendations from the Governors, local boards, and other interested parties.

**(2) Methods**

In prescribing standards and procedures under paragraph (1), the Secretary, at a minimum, shall—

(A) prescribe procedures for informing enrollees that drug tests will be administered to the enrollees and the results received within 45 days after the enrollees enroll in the Job Corps;

(B) establish standards for recruitment of Job Corps applicants;

(C) establish standards and procedures for—

(i) determining, for each applicant, whether the educational and vocational needs of the applicant can best be met through the Job Corps program or an alternative program in the community in which the applicant resides; and

(ii) obtaining from each applicant pertinent data relating to background, needs, and interests for determining eligibility and potential assignment;

(D) where appropriate, take measures to improve the professional capability of the individuals conducting screening of the applicants; and

(E) assure that an appropriate number of enrollees are from rural areas.

**(3) Implementation**

To the extent practicable, the standards and procedures shall be implemented through arrangements with—

(A) applicable one-stop centers;

(B) community action agencies, business organizations, and labor organizations; and

(C) agencies and individuals that have contact with youth over substantial periods of time and are able to offer reliable information about the needs and problems of youth.

**(4) Consultation**

The standards and procedures shall provide for necessary consultation with individuals and organizations, including court, probation, parole, law enforcement, education, welfare, and medical authorities and advisers.

**(5) Reimbursement**

The Secretary is authorized to enter into contracts with and make payments to individuals and organizations for the cost of conducting recruitment, screening, and selection of eligible applicants for the Job Corps, as provided for in this section. The Secretary shall make no payment to any individual or organization solely as compensation for referring the names of applicants for the Job Corps.

**(b) Special limitations on selection****(1) In general**

No individual shall be selected as an enrollee unless the individual or organization implementing the standards and procedures described in subsection (a) of this section determines that—

(A) there is a reasonable expectation that the individual considered for selection can participate successfully in group situations and activities, and is not likely to engage in

behavior that would prevent other enrollees from receiving the benefit of the Job Corps program or be incompatible with the maintenance of sound discipline and satisfactory relationships between the Job Corps center to which the individual might be assigned and communities surrounding the Job Corps center;

(B) the individual manifests a basic understanding of both the rules to which the individual will be subject and of the consequences of failure to observe the rules; and

(C) the individual has passed a background check conducted in accordance with procedures established by the Secretary.

**(2) Individuals on probation, parole, or supervised release**

An individual on probation, parole, or supervised release may be selected as an enrollee only if release from the supervision of the probation or parole official involved is satisfactory to the official and the Secretary and does not violate applicable laws (including regulations). No individual shall be denied a position in the Job Corps solely on the basis of individual contact with the criminal justice system.

**(c) Assignment plan**

**(1) In general**

Every 2 years, the Secretary shall develop and implement an assignment plan for assigning enrollees to Job Corps centers. In developing the plan, the Secretary shall, based on the analysis described in paragraph (2), establish targets, applicable to each Job Corps center, for—

(A) the maximum attainable percentage of enrollees at the Job Corps center that reside in the State in which the center is located; and

(B) the maximum attainable percentage of enrollees at the Job Corps center that reside in the region in which the center is located, and in surrounding regions.

**(2) Analysis**

In order to develop the plan described in paragraph (1), the Secretary shall, every 2 years, analyze, for the Job Corps center—

(A) the size of the population of individuals eligible to participate in Job<sup>1</sup> Corps in the State and region in which the Job Corps center is located, and in surrounding regions;

(B) the relative demand for participation in the Job Corps in the State and region, and in surrounding regions; and

(C) the capacity and utilization of the Job Corps center, including services provided through the center.

**(d) Assignment of individual enrollees**

**(1) In general**

After an individual has been selected for the Job Corps in accordance with the standards and procedures of the Secretary under subsection (a) of this section, the enrollee shall be assigned to the Job Corps center that is closest to the home of the enrollee, except that the Secretary may waive this requirement if—

(A) the enrollee chooses a vocational training program, or requires an English literacy program, that is not available at such center;

(B) the enrollee would be unduly delayed in participating in the Job Corps program because the closest center is operating at full capacity; or

(C) the parent or guardian of the enrollee requests assignment of the enrollee to another Job Corps center due to circumstances in the community of the enrollee that would impair prospects for successful participation in the Job Corps program.

**(2) Enrollees who are younger than 18**

An enrollee who is younger than 18 shall not be assigned to a Job Corps center other than the center closest to the home of the enrollee pursuant to paragraph (1) if the parent or guardian of the enrollee objects to the assignment.

(Pub. L. 105-220, title I, §145, Aug. 7, 1998, 112 Stat. 1007.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 2892, 2898 of this title.

**§ 2886. Enrollment**

**(a) Relationship between enrollment and military obligations**

Enrollment in the Job Corps shall not relieve any individual of obligations under the Military Selective Service Act (50 U.S.C. App. 451 et seq.).

**(b) Period of enrollment**

No individual may be enrolled in the Job Corps for more than 2 years, except—

(1) in a case in which completion of an advanced career training program under section 2888(c) of this title would require an individual to participate in the Job Corps for not more than one additional year; or

(2) as the Secretary may authorize in a special case.

(Pub. L. 105-220, title I, §146, Aug. 7, 1998, 112 Stat. 1010.)

**REFERENCES IN TEXT**

The Military Selective Service Act, referred to in subsec. (a), is act June 24, 1948, ch. 625, 62 Stat. 604, as amended, which is classified principally to section 451 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see References in Text note set out under section 451 of Title 50, Appendix, and Tables.

**§ 2887. Job Corps centers**

**(a) Operators and service providers**

**(1) Eligible entities**

**(A) Operators**

The Secretary shall enter into an agreement with a Federal, State, or local agency, an area vocational education school or residential vocational school, or a private organization, for the operation of each Job Corps center.

**(B) Providers**

The Secretary may enter into an agreement with a local entity to provide activi-

<sup>1</sup> So in original. Probably should be preceded by "the".

ties described in this subchapter to the Job Corps center.

**(2) Selection process**

**(A) Competitive basis**

Except as provided in subsections (c) and (d) of section 253 of title 41, the Secretary shall select on a competitive basis an entity to operate a Job Corps center and entities to provide activities described in this subchapter to the Job Corps center. In developing a solicitation for an operator or service provider, the Secretary shall consult with the Governor of the State in which the center is located, the industry council for the Job Corps center (if established), and the applicable local board regarding the contents of such solicitation, including elements that will promote the consistency of the activities carried out through the center with the objectives set forth in the State plan or in a local plan.

**(B) Recommendations and considerations**

**(i) Operators**

In selecting an entity to operate a Job Corps center, the Secretary shall consider—

(I) the ability of the entity to coordinate the activities carried out through the Job Corps center with activities carried out under the appropriate State plan and local plans;

(II) the degree to which the vocational training that the entity proposes for the center reflects local employment opportunities in the local areas in which enrollees at the center intend to seek employment;

(III) the degree to which the entity is familiar with the surrounding communities, applicable one-stop centers, and the State and region in which the center is located; and

(IV) the past performance of the entity, if any, relating to operating or providing activities described in this subchapter to a Job Corps center.

**(ii) Providers**

In selecting a service provider for a Job Corps center, the Secretary shall consider the factors described in subclauses (I) through (IV) of clause (i), as appropriate.

**(b) Character and activities**

Job Corps centers may be residential or non-residential in character, and shall be designed and operated so as to provide enrollees, in a well-supervised setting, with access to activities described in this subchapter. In any year, no more than 20 percent of the individuals enrolled in the Job Corps may be nonresidential participants in the Job Corps.

**(c) Civilian Conservation Centers**

**(1) In general**

The Job Corps centers may include Civilian Conservation Centers operated under agreements with the Secretary of Agriculture or the Secretary of the Interior, located primarily in rural areas, which shall provide, in

addition to other vocational training and assistance, programs of work experience to conserve, develop, or manage public natural resources or public recreational areas or to develop community projects in the public interest.

**(2) Selection process**

The Secretary may select an entity to operate a Civilian Conservation Center on a competitive basis, as provided in subsection (a) of this section, if the center fails to meet such national performance standards as the Secretary shall establish.

**(d) Indian tribes**

**(1) General authority**

The Secretary may enter into agreements with Indian tribes to operate Job Corps centers for Indians.

**(2) Definitions**

In this subsection, the terms “Indian” and “Indian tribe”, have the meanings given such terms in subsections (d) and (e), respectively, of section 450b of title 25.

(Pub. L. 105-220, title I, §147, Aug. 7, 1998, 112 Stat. 1010.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2882, 2898 of this title.

**§ 2888. Program activities**

**(a) Activities provided by Job Corps centers**

**(1) In general**

Each Job Corps center shall provide enrollees with an intensive, well organized, and fully supervised program of education, vocational training, work experience, recreational activities, physical rehabilitation and development, and counseling. Each Job Corps center shall provide enrollees assigned to the center with access to core services described in section 2864(d)(2) of this title and the intensive services described in section 2864(d)(3) of this title.

**(2) Relationship to opportunities**

**(A) In general**

The activities provided under this subsection shall provide work-based learning throughout the enrollment of the enrollees and assist the enrollees in obtaining meaningful unsubsidized employment, participating in secondary education or postsecondary education programs, enrolling in other suitable vocational training programs, or satisfying Armed Forces requirements, on completion of their enrollment.

**(B) Link to employment opportunities**

The vocational training provided shall be linked to the employment opportunities in the local area in which the enrollee intends to seek employment after graduation.

**(b) Education and vocational training**

The Secretary may arrange for education and vocational training of enrollees through local public or private educational agencies, vocational educational institutions, or technical in-



stitutes, whenever such entities provide education and training substantially equivalent in cost and quality to that which the Secretary could provide through other means.

**(c) Advanced career training programs**

**(1) In general**

The Secretary may arrange for programs of advanced career training for selected enrollees in which the enrollees may continue to participate for a period of not to exceed 1 year in addition to the period of participation to which the enrollees would otherwise be limited. The advanced career training may be provided through the eligible providers of training services identified under section 2842 of this title.

**(2) Benefits**

**(A) In general**

During the period of participation in an advanced career training program, an enrollee shall be eligible for full Job Corps benefits, or a monthly stipend equal to the average value of the residential support, food, allowances, and other benefits provided to enrollees assigned to residential Job Corps centers.

**(B) Calculation**

The total amount for which an enrollee shall be eligible under subparagraph (A) shall be reduced by the amount of any scholarship or other educational grant assistance received by such enrollee for advanced career training.

**(3) Demonstration**

Each year, any operator seeking to enroll additional enrollees in an advanced career training program shall demonstrate that participants in such program have achieved a satisfactory rate of completion and placement in training-related jobs before the operator may carry out such additional enrollment.

**(d) Continued services**

The Secretary shall also provide continued services to graduates, including providing counseling regarding the workplace for 12 months after the date of graduation of the graduates. In selecting a provider for such services, the Secretary shall give priority to one-stop partners.

**(e) Child care**

The Secretary shall, to the extent practicable, provide child care at or near Job Corps centers, for individuals who require child care for their children in order to participate in the Job Corps.

(Pub. L. 105-220, title I, §148, Aug. 7, 1998, 112 Stat. 1011.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2886 of this title.

**§ 2889. Counseling and job placement**

**(a) Counseling and testing**

The Secretary shall arrange for counseling and testing for each enrollee at regular intervals to measure progress in the education and vocational training programs carried out through the Job Corps.

**(b) Placement**

The Secretary shall arrange for counseling and testing for enrollees prior to their scheduled graduations to determine their capabilities and, based on their capabilities, shall make every effort to arrange to place the enrollees in jobs in the vocations for which the enrollees are trained or to assist the enrollees in obtaining further activities described in this subchapter. In arranging for the placement of graduates in jobs, the Secretary shall utilize the one-stop delivery system to the fullest extent possible.

**(c) Status and progress**

The Secretary shall determine the status and progress of enrollees scheduled for graduation and make every effort to assure that their needs for further activities described in this subchapter are met.

**(d) Services to former enrollees**

The Secretary may provide such services as the Secretary determines to be appropriate under this subchapter to former enrollees.

(Pub. L. 105-220, title I, §149, Aug. 7, 1998, 112 Stat. 1012.)

**§ 2890. Support**

**(a) Personal allowances**

The Secretary may provide enrollees assigned to Job Corps centers with such personal allowances as the Secretary may determine to be necessary or appropriate to meet the needs of the enrollees.

**(b) Readjustment allowances**

**(1) Graduates**

The Secretary shall arrange for a readjustment allowance to be paid to graduates. The Secretary shall arrange for the allowance to be paid at the one-stop center nearest to the home of the graduate who is returning home, or at the one-stop center nearest to the location where the graduate has indicated an intent to seek employment. If the Secretary uses any organization, in lieu of a one-stop center, to provide placement services under this Act, the Secretary shall arrange for that organization to pay the readjustment allowance.

**(2) Former enrollees**

The Secretary may provide for a readjustment allowance to be paid to former enrollees. The provision of the readjustment allowance shall be subject to the same requirements as are applicable to the provision of the readjustment allowance paid to graduates under paragraph (1).

(Pub. L. 105-220, title I, §150, Aug. 7, 1998, 112 Stat. 1013.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b)(1), is Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 936, as amended, known as the Workforce Investment Act of 1998. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

**§ 2891. Operating plan****(a) In general**

The provisions of the contract between the Secretary and an entity selected to operate a Job Corps center shall, at a minimum, serve as an operating plan for the Job Corps center.

**(b) Additional information**

The Secretary may require the operator, in order to remain eligible to operate the Job Corps center, to submit such additional information as the Secretary may require, which shall be considered part of the operating plan.

**(c) Availability**

The Secretary shall make the operating plan described in subsections (a) and (b) of this section, excluding any proprietary information, available to the public.

(Pub. L. 105-220, title I, §151, Aug. 7, 1998, 112 Stat. 1013.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2939 of this title.

**§ 2892. Standards of conduct****(a) Provision and enforcement**

The Secretary shall provide, and directors of Job Corps centers shall stringently enforce, standards of conduct within the centers. Such standards of conduct shall include provisions forbidding the actions described in subsection (b)(2)(A) of this section.

**(b) Disciplinary measures****(1) In general**

To promote the proper moral and disciplinary conditions in the Job Corps, the directors of Job Corps centers shall take appropriate disciplinary measures against enrollees. If such a director determines that an enrollee has committed a violation of the standards of conduct, the director shall dismiss the enrollee from the Job Corps if the director determines that the retention of the enrollee in the Job Corps will jeopardize the enforcement of such standards or diminish the opportunities of other enrollees.

**(2) Zero tolerance policy and drug testing****(A) Guidelines**

The Secretary shall adopt guidelines establishing a zero tolerance policy for an act of violence, for use, sale, or possession of a controlled substance, for abuse of alcohol, or for other illegal or disruptive activity.

**(B) Drug testing**

The Secretary shall require drug testing of all enrollees for controlled substances in accordance with procedures prescribed by the Secretary under section 2885(a) of this title.

**(C) Definitions**

In this paragraph:

**(i) Controlled substance**

The term “controlled substance” has the meaning given the term in section 802 of title 21.

**(ii) Zero tolerance policy**

The term “zero tolerance policy” means a policy under which an enrollee shall be

automatically dismissed from the Job Corps after a determination by the director that the enrollee has carried out an action described in subparagraph (A).

**(c) Appeal**

A disciplinary measure taken by a director under this section shall be subject to expeditious appeal in accordance with procedures established by the Secretary.

(Pub. L. 105-220, title I, §152, Aug. 7, 1998, 112 Stat. 1013.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2899 of this title.

**§ 2893. Community participation****(a) Business and Community Liaison**

Each Job Corps center shall have a Business and Community Liaison (referred to in this Act as a “Liaison”), designated by the director of the center.

**(b) Responsibilities**

The responsibilities of the Liaison shall include—

(1) establishing and developing relationships and networks with—

(A) local and distant employers; and

(B) applicable one-stop centers and applicable local boards,

for the purpose of providing job opportunities for Job Corps graduates; and

(2) establishing and developing relationships with members of the community in which the Job Corps center is located, informing members of the community about the projects of the Job Corps center and changes in the rules, procedures, or activities of the center that may affect the community, and planning events of mutual interest to the community and the Job Corps center.

**(c) New centers**

The Liaison for a Job Corps center that is not yet operating shall establish and develop the relationships and networks described in subsection (b) of this section at least 3 months prior to the date on which the center accepts the first enrollee at the center.

(Pub. L. 105-220, title I, §153, Aug. 7, 1998, 112 Stat. 1014.)

## REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 936, as amended, known as the Workforce Investment Act of 1998. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

**§ 2894. Industry councils****(a) In general**

Each Job Corps center shall have an industry council, appointed by the director of the center after consultation with the Liaison, in accordance with procedures established by the Secretary.

**(b) Industry council composition****(1) In general**

An industry council shall be comprised of—

(A) a majority of members who shall be local and distant owners of business concerns, chief executives or chief operating officers of nongovernmental employers, or other private sector employers, who—

- (i) have substantial management, hiring, or policy responsibility; and
- (ii) represent businesses with employment opportunities that reflect the employment opportunities of the applicable local area;

(B) representatives of labor organizations (where present) and representatives of employees; and

(C) enrollees and graduates of the Job Corps.

## **(2) Local board**

The industry council may include members of the applicable local boards who meet the requirements described in paragraph (1).

## **(c) Responsibilities**

The responsibilities of the industry council shall be—

(1) to work closely with all applicable local boards in order to determine, and recommend to the Secretary, appropriate vocational training for the center;

(2) to review all the relevant labor market information to—

(A) determine the employment opportunities in the local areas in which the enrollees intend to seek employment after graduation;

(B) determine the skills and education that are necessary to obtain the employment opportunities; and

(C) recommend to the Secretary the type of vocational training that should be implemented at the center to enable the enrollees to obtain the employment opportunities; and

(3) to meet at least once every 6 months to reevaluate the labor market information, and other relevant information, to determine, and recommend to the Secretary, any necessary changes in the vocational training provided at the center.

## **(d) New centers**

The industry council for a Job Corps center that is not yet operating shall carry out the responsibilities described in subsection (c) of this section at least 3 months prior to the date on which the center accepts the first enrollee at the center.

(Pub. L. 105-220, title I, §154, Aug. 7, 1998, 112 Stat. 1015.)

## **§ 2895. Advisory committees**

The Secretary may establish and use advisory committees in connection with the operation of the Job Corps program, and the operation of Job Corps centers, whenever the Secretary determines that the availability of outside advice and counsel on a regular basis would be of substantial benefit in identifying and overcoming problems, in planning program or center development, or in strengthening relationships between the Job Corps and agencies, institutions, or groups engaged in related activities.

(Pub. L. 105-220, title I, §155, Aug. 7, 1998, 112 Stat. 1015.)

## **§ 2896. Experimental, research, and demonstration projects**

The Secretary may carry out experimental, research, or demonstration projects relating to carrying out the Job Corps program and may waive any provisions of this subchapter that the Secretary finds would prevent the Secretary from carrying out the projects.

(Pub. L. 105-220, title I, §156, Aug. 7, 1998, 112 Stat. 1016.)

## **§ 2897. Application of provisions of Federal law**

### **(a) Enrollees not considered to be Federal employees**

#### **(1) In general**

Except as otherwise provided in this subsection and in section 8143(a) of title 5, enrollees shall not be considered to be Federal employees and shall not be subject to the provisions of law relating to Federal employment, including such provisions regarding hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits.

#### **(2) Provisions relating to taxes and social security benefits**

For purposes of title 26 and title II of the Social Security Act (42 U.S.C. 401 et seq.), enrollees shall be deemed to be employees of the United States and any service performed by an individual as an enrollee shall be deemed to be performed in the employ of the United States.

#### **(3) Provisions relating to compensation to Federal employees for work injuries**

For purposes of subchapter I of chapter 81 of title 5 (relating to compensation to Federal employees for work injuries), enrollees shall be deemed to be civil employees of the Government of the United States within the meaning of the term “employee” as defined in section 8101 of title 5, and the provisions of such subchapter shall apply as specified in section 8143(a) of title 5.

#### **(4) Federal tort claims provisions**

For purposes of the Federal tort claims provisions in title 28, enrollees shall be considered to be employees of the Government.

### **(b) Adjustments and settlements**

Whenever the Secretary finds a claim for damages to a person or property resulting from the operation of the Job Corps to be a proper charge against the United States, and the claim is not cognizable under section 2672 of title 28, the Secretary may adjust and settle the claim in an amount not exceeding \$1,500.

### **(c) Personnel of the uniformed services**

Personnel of the uniformed services who are detailed or assigned to duty in the performance of agreements made by the Secretary for the support of the Job Corps shall not be counted in computing strength under any law limiting the strength of such services or in computing the percentage authorized by law for any grade in such services.

(Pub. L. 105-220, title I, §157, Aug. 7, 1998, 112 Stat. 1016.)

#### REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Federal tort claim provisions in title 28, referred to in subsec. (a)(4), are the provisions of the Federal Tort Claims Act, which is classified generally to section 1346(b) and chapter 171 (§2671 et seq.) of Title 28, Judiciary and Judicial Procedure.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2900 of this title.

### § 2898. Special provisions

#### (a) Enrollment

The Secretary shall ensure that women and men have an equal opportunity to participate in the Job Corps program, consistent with section 2885 of this title.

#### (b) Studies, evaluations, proposals, and data

The Secretary shall assure that all studies, evaluations, proposals, and data produced or developed with Federal funds in the course of carrying out the Job Corps program shall become the property of the United States.

#### (c) Transfer of property

##### (1) In general

Notwithstanding title II of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481 et seq.) and any other provision of law, the Secretary and the Secretary of Education shall receive priority by the Secretary of Defense for the direct transfer, on a nonreimbursable basis, of the property described in paragraph (2) for use in carrying out programs under this Act or under any other Act.

##### (2) Property

The property described in this paragraph is real and personal property under the control of the Department of Defense that is not used by such Department, including property that the Secretary of Defense determines is in excess of current and projected requirements of such Department.

#### (d) Gross receipts

Transactions conducted by a private for-profit or nonprofit entity that is an operator or service provider for a Job Corps center shall not be considered to be generating gross receipts. Such an operator or service provider shall not be liable, directly or indirectly, to any State or subdivision of a State (nor to any person acting on behalf of such a State or subdivision) for any gross receipts taxes, business privilege taxes measured by gross receipts, or any similar taxes imposed on, or measured by, gross receipts in connection with any payments made to or by such entity for operating or providing services to a Job Corps center. Such an operator or service provider shall not be liable to any State or subdivision of a State to collect or pay any sales, excise, use, or similar tax imposed on the sale to

or use by such operator or service provider of any property, service, or other item in connection with the operation of or provision of services to a Job Corps center.

#### (e) Management fee

The Secretary shall provide each operator and (in an appropriate case, as determined by the Secretary) service provider with an equitable and negotiated management fee of not less than 1 percent of the amount of the funding provided under the appropriate agreement specified in section 2887 of this title.

#### (f) Donations

The Secretary may accept on behalf of the Job Corps or individual Job Corps centers charitable donations of cash or other assistance, including equipment and materials, if such donations are available for appropriate use for the purposes set forth in this subchapter.

#### (g) Sale of property

Notwithstanding any other provision of law, if the Administrator of General Services sells a Job Corps center facility, the Administrator shall transfer the proceeds from the sale to the Secretary, who shall use the proceeds to carry out the Job Corps program.

(Pub. L. 105-220, title I, §158, Aug. 7, 1998, 112 Stat. 1016.)

#### REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (c)(1), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Title II of that Act, is classified principally to subchapter II (§481 et seq.) of chapter 10 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40 and Tables.

### § 2899. Management information

#### (a) Financial management information system

##### (1) In general

The Secretary shall establish procedures to ensure that each operator, and each service provider, maintains a financial management information system that will provide—

(A) accurate, complete, and current disclosures of the costs of Job Corps operations; and

(B) sufficient data for the effective evaluation of activities carried out through the Job Corps program.

##### (2) Accounts

Each operator and service provider shall maintain funds received under this subchapter in accounts in a manner that ensures timely and accurate reporting as required by the Secretary.

##### (3) Fiscal responsibility

Operators shall remain fiscally responsible and control costs, regardless of whether the funds made available for Job Corps centers are incrementally increased or decreased between fiscal years.

#### (b) Audit

##### (1) Access

The Secretary, the Inspector General of the Department of Labor, the Comptroller General

of the United States, and any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the operators and service providers described in subsection (a) of this section that are pertinent to the Job Corps program, for purposes of conducting surveys, audits, and evaluations of the operators and service providers.

**(2) Surveys, audits, and evaluations**

The Secretary shall survey, audit, or evaluate, or arrange for the survey, audit, or evaluation of, the operators and service providers, using Federal auditors or independent public accountants. The Secretary shall conduct such surveys, audits, or evaluations not less often than once every 3 years.

**(c) Information on indicators of performance**

**(1) Establishment**

The Secretary shall, with continuity and consistency from year to year, establish indicators of performance, and expected levels of performance for Job Corps centers and the Job Corps program, relating to—

(A) the number of graduates and the rate of such graduation, analyzed by type of vocational training received through the Job Corps program and by whether the vocational training was provided by a local or national service provider;

(B) the number of graduates who entered unsubsidized employment related to the vocational training received through the Job Corps program and the number who entered unsubsidized employment not related to the vocational training received, analyzed by whether the vocational training was provided by a local or national service provider and by whether the placement in the employment was conducted by a local or national service provider;

(C) the average wage received by graduates who entered unsubsidized employment related to the vocational training received through the Job Corps program and the average wage received by graduates who entered unsubsidized employment unrelated to the vocational training received;

(D) the average wage received by graduates placed in unsubsidized employment after completion of the Job Corps program—

- (i) on the first day of the employment;
- (ii) 6 months after the first day of the employment; and
- (iii) 12 months after the first day of the employment,

analyzed by type of vocational training received through the Job Corps program;

(E) the number of graduates who entered unsubsidized employment and were retained in the unsubsidized employment—

- (i) 6 months after the first day of the employment; and
- (ii) 12 months after the first day of the employment;

(F) the number of graduates who entered unsubsidized employment—

- (i) for 32 hours per week or more;
- (ii) for not less than 20 but less than 32 hours per week; and

(iii) for less than 20 hours per week;

(G) the number of graduates who entered postsecondary education or advanced training programs, including apprenticeship programs, as appropriate; and

(H) the number of graduates who attained job readiness and employment skills.

**(2) Performance of recruiters**

The Secretary shall also establish performance measures, and expected performance levels on the performance measures, for local and national recruitment service providers serving the Job Corps program. The performance measures shall relate to the number of enrollees retained in the Job Corps program for 30 days and for 60 days after initial placement in the program.

**(3) Report**

The Secretary shall collect, and annually submit a report to the appropriate committees of Congress containing, information on the performance of each Job Corps center, and the Job Corps program, on the core performance measures, as compared to the expected performance level for each performance measure. The report shall also contain information on the performance of the service providers described in paragraph (2) on the performance measures established under such paragraph, as compared to the expected performance levels for the performance measures.

**(d) Additional information**

The Secretary shall also collect, and submit in the report described in subsection (c) of this section, information on the performance of each Job Corps center, and the Job Corps program, regarding—

- (1) the number of enrollees served;
- (2) the average level of learning gains for graduates and former enrollees;
- (3) the number of former enrollees and graduates who entered the Armed Forces;
- (4) the number of former enrollees who entered postsecondary education;
- (5) the number of former enrollees who entered unsubsidized employment related to the vocational training received through the Job Corps program and the number who entered unsubsidized employment not related to the vocational training received;
- (6) the number of former enrollees and graduates who obtained a secondary school diploma or its recognized equivalent;
- (7) the number and percentage of dropouts from the Job Corps program including the number dismissed under the zero tolerance policy described in section 2892(b) of this title; and
- (8) any additional information required by the Secretary.

**(e) Methods**

The Secretary may collect the information described in subsections (c) and (d) of this section using methods described in section 2871(f)(2) of this title consistent with State law.

**(f) Performance assessments and improvements**

**(1) Assessments**

The Secretary shall conduct an annual assessment of the performance of each Job Corps

center. Based on the assessment, the Secretary shall take measures to continuously improve the performance of the Job Corps program.

**(2) Performance improvement plans**

With respect to a Job Corps center that fails to meet the expected levels of performance relating to the core performance measures specified in subsection (c) of this section, the Secretary shall develop and implement a performance improvement plan. Such a plan shall require action including—

- (A) providing technical assistance to the center;
- (B) changing the vocational training offered at the center;
- (C) changing the management staff of the center;
- (D) replacing the operator of the center;
- (E) reducing the capacity of the center;
- (F) relocating the center; or
- (G) closing the center.

**(3) Additional performance improvement plans**

In addition to the performance improvement plans required under paragraph (2), the Secretary may develop and implement additional performance improvement plans. Such a plan shall require improvements, including the actions described in paragraph (2), for a Job Corps center that fails to meet criteria established by the Secretary other than the expected levels of performance described in paragraph (2).

**(g) Closure of Job Corps center**

Prior to the closure of any Job Corps center, the Secretary shall ensure—

- (1) that the proposed decision to close the center is announced in advance to the general public through publication in the Federal Register or other appropriate means;
- (2) the establishment of a reasonable comment period, not to exceed 30 days, for interested individuals to submit written comments to the Secretary; and
- (3) that the Member of Congress who represents the district in which such center is located is notified within a reasonable period of time in advance of any final decision to close the center.

(Pub. L. 105-220, title I, §159, Aug. 7, 1998, 112 Stat. 1017; Pub. L. 105-277, div. A, §101(f) [title VIII, §401(6)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-411.)

**AMENDMENTS**

1998—Subsec. (c)(1)(G). Pub. L. 105-277, §101(f) [title VIII, §401(6)(A)], substituted “postsecondary” for “post-secondary”.

Subsec. (c)(3). Pub. L. 105-277, §101(f) [title VIII, §401(6)(B)], substituted “containing,” for “containing”.

Subsec. (d)(4). Pub. L. 105-277, §101(f) [title VIII, §401(6)(A)], substituted “postsecondary” for “post-secondary”.

**§ 2900. General provisions**

The Secretary is authorized to—

- (1) disseminate, with regard to the provisions of section 3204 of title 39, data and information in such forms as the Secretary shall

determine to be appropriate, to public agencies, private organizations, and the general public;

(2) subject to section 2897(b) of this title, collect or compromise all obligations to or held by the Secretary and exercise all legal or equitable rights accruing to the Secretary in connection with the payment of obligations until such time as such obligations may be referred to the Attorney General for suit or collection; and

(3) expend funds made available for purposes of this subchapter—

(A) for printing and binding, in accordance with applicable law (including regulation); and

(B) without regard to any other law (including regulation), for rent of buildings and space in buildings and for repair, alteration, and improvement of buildings and space in buildings rented by the Secretary, except that the Secretary shall not expend funds under the authority of this subparagraph—

(i) except when necessary to obtain an item, service, or facility, that is required in the proper administration of this subchapter, and that otherwise could not be obtained, or could not be obtained in the quantity or quality needed, or at the time, in the form, or under the conditions in which the item, service, or facility is needed; and

(ii) prior to having given written notification to the Administrator of General Services (if the expenditure would affect an activity that otherwise would be under the jurisdiction of the General Services Administration) of the intention of the Secretary to make the expenditure, and the reasons and justifications for the expenditure.

(Pub. L. 105-220, title I, §160, Aug. 7, 1998, 112 Stat. 1020.)

**§ 2901. Authorization of appropriations**

There are authorized to be appropriated to carry out this subchapter such sums as may be necessary for each of the fiscal years 1999 through 2003.

(Pub. L. 105-220, title I, §161, Aug. 7, 1998, 112 Stat. 1021.)

**SUBCHAPTER IV—NATIONAL PROGRAMS**

**SUBCHAPTER REFERRED TO IN OTHER SECTIONS**

This subchapter is referred to in sections 2801, 2939 of this title; title 20 section 9274; title 42 section 4368a.

**§ 2911. Native American programs**

**(a) Purpose**

**(1) In general**

The purpose of this section is to support employment and training activities for Indian, Alaska Native, and Native Hawaiian individuals in order—

(A) to develop more fully the academic, occupational, and literacy skills of such individuals;

(B) to make such individuals more competitive in the workforce; and

(C) to promote the economic and social development of Indian, Alaska Native, and Native Hawaiian communities in accordance with the goals and values of such communities.

**(2) Indian policy**

All programs assisted under this section shall be administered in a manner consistent with the principles of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) and the government-to-government relationship between the Federal Government and Indian tribal governments.

**(b) Definitions**

As used in this section:

**(1) Alaska Native**

The term “Alaska Native” means a Native as such term is defined in section 1602(b) of title 43.

**(2) Indian, Indian tribe, and tribal organization**

The terms “Indian”, “Indian tribe”, and “tribal organization” have the meanings given such terms in subsections (d), (e), and (f), respectively, of section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

**(3) Native Hawaiian and Native Hawaiian organization**

The terms “Native Hawaiian” and “Native Hawaiian organization” have the meanings given such terms in paragraphs (1) and (3), respectively, of section 7912 of title 20.

**(c) Program authorized**

**(1) In general**

The Secretary shall, on a competitive basis, make grants to, or enter into contracts or cooperative agreements with, Indian tribes, tribal organizations, Alaska Native entities, Indian-controlled organizations serving Indians, or Native Hawaiian organizations to carry out the authorized activities described in subsection (d) of this section.

**(2) Exception**

The competition for grants, contracts, or cooperative agreements conducted under paragraph (1) shall be conducted every 2 years, except that if a recipient of such a grant, contract, or agreement has performed satisfactorily, the Secretary may waive the requirements for such competition on receipt from the recipient of a satisfactory 2-year program plan for the succeeding 2-year period of the grant, contract, or agreement.

**(d) Authorized activities**

**(1) In general**

Funds made available under subsection (c) of this section shall be used to carry out the activities described in paragraph (2) that—

(A) are consistent with this section; and

(B) are necessary to meet the needs of Indians or Native Hawaiians preparing to enter, reenter, or retain unsubsidized employment.

**(2) Workforce investment activities and supplemental services**

**(A) In general**

Funds made available under subsection (c) of this section shall be used for—

(i) comprehensive workforce investment activities for Indians or Native Hawaiians; or

(ii) supplemental services for Indian or Native Hawaiian youth on or near Indian reservations and in Oklahoma, Alaska, or Hawaii.

**(B) Special rule**

Notwithstanding any other provision of this section, individuals who were eligible to participate in programs under section 1671 of this title (as such section was in effect on the day before August 7, 1998) shall be eligible to participate in an activity assisted under this section.

**(e) Program plan**

In order to receive a grant or enter into a contract or cooperative agreement under this section an entity described in subsection (c) of this section shall submit to the Secretary a program plan that describes a 2-year strategy for meeting the needs of Indian, Alaska Native, or Native Hawaiian individuals, as appropriate, in the area served by such entity. Such plan shall—

(1) be consistent with the purpose of this section;

(2) identify the population to be served;

(3) identify the education and employment needs of the population to be served and the manner in which the activities to be provided will strengthen the ability of the individuals served to obtain or retain unsubsidized employment;

(4) describe the activities to be provided and the manner in which such activities are to be integrated with other appropriate activities; and

(5) describe, after the entity submitting the plan consults with the Secretary, the performance measures to be used to assess the performance of entities in carrying out the activities assisted under this section.

**(f) Consolidation of funds**

Each entity receiving assistance under subsection (c) of this section may consolidate such assistance with assistance received from related programs in accordance with the provisions of the Indian Employment, Training and Related Services Demonstration Act of 1992 (25 U.S.C. 3401 et seq.).

**(g) Nonduplicative and nonexclusive services**

Nothing in this section shall be construed—

(1) to limit the eligibility of any entity described in subsection (c) of this section to participate in any activity offered by a State or local entity under this Act; or

(2) to preclude or discourage any agreement, between any entity described in subsection (c) of this section and any State or local entity, to facilitate the provision of services by such entity or to the population served by such entity.

**(h) Administrative provisions****(1) Organizational unit established**

The Secretary shall designate a single organizational unit within the Department of Labor that shall have primary responsibility for the administration of the activities authorized under this section.

**(2) Regulations**

The Secretary shall consult with the entities described in subsection (c) of this section in—

(A) establishing regulations to carry out this section, including performance measures for entities receiving assistance under such subsection, taking into account the economic circumstances of such entities; and

(B) developing a funding distribution plan that takes into consideration previous levels of funding (prior to August 7, 1998) to such entities.

**(3) Waivers****(A) In general**

With respect to an entity described in subsection (c) of this section, the Secretary, notwithstanding any other provision of law, may, pursuant to a request submitted by such entity that meets the requirements established under subparagraph (B), waive any of the statutory or regulatory requirements of this chapter that are inconsistent with the specific needs of the entities described in such subsection, except that the Secretary may not waive requirements relating to wage and labor standards, worker rights, participation and protection of workers and participants, grievance procedures, and judicial review.

**(B) Request and approval**

An entity described in subsection (c) of this section that requests a waiver under subparagraph (A) shall submit a plan to the Secretary to improve the program of workforce investment activities carried out by the entity, which plan shall meet the requirements established by the Secretary and shall be generally consistent with the requirements of section 2939(i)(4)(B) of this title.

**(4) Advisory council****(A) In general**

Using funds made available to carry out this section, the Secretary shall establish a Native American Employment and Training Council to facilitate the consultation described in paragraph (2).

**(B) Composition**

The Council shall be composed of individuals, appointed by the Secretary, who are representatives of the entities described in subsection (c) of this section.

**(C) Duties**

The Council shall advise the Secretary on all aspects of the operation and administration of the programs assisted under this section, including the selection of the individ-

ual appointed as the head of the unit established under paragraph (1).

**(D) Personnel matters****(i) Compensation of members**

Members of the Council shall serve without compensation.

**(ii) Travel expenses**

The members of the Council shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, while away from their homes or regular places of business in the performance of services for the Council.

**(iii) Administrative support**

The Secretary shall provide the Council with such administrative support as may be necessary to perform the functions of the Council.

**(E) Chairperson**

The Council shall select a chairperson from among its members.

**(F) Meetings**

The Council shall meet not less than twice each year.

**(G) Application**

Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Council.

**(5) Technical assistance**

The Secretary, acting through the unit established under paragraph (1), is authorized to provide technical assistance to entities described in subsection (c) of this section that receive assistance under subsection (c) of this section to enable such entities to improve the activities authorized under this section that are provided by such entities.

**(6) Agreement for certain federally recognized Indian tribes to transfer funds to the program**

A federally recognized Indian tribe that administers funds provided under this section and funds provided by more than one State under other sections of this chapter may enter into an agreement with the Secretary and the Governors of the affected States to transfer the funds provided by the States to the program administered by the tribe under this section.

**(i) Compliance with single audit requirements; related requirement**

Grants, contracts, and cooperative agreements entered into under this section shall be subject to the requirements of chapter 75 of subtitle V of title 31 (enacted by the Single Audit Act of 1984) and charging of costs under this section shall be subject to appropriate circulars issued by the Office of Management and Budget.

**(j) Assistance to American Samoans in Hawaii****(1) In general**

Notwithstanding any other provision of law, the Secretary is authorized to provide assist-



ance to American Samoans who reside in Hawaii for the co-location of federally funded and State-funded workforce investment activities.

## (2) Authorization of appropriations

There are authorized to be appropriated for fiscal year 1999 such sums as may be necessary to carry out this subsection.

(Pub. L. 105-220, title I, §166, Aug. 7, 1998, 112 Stat. 1021; Pub. L. 105-277, div. A, §101(f) [title VIII, §401(7)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-411.)

### REFERENCES IN TEXT

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (a)(2), is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§450 et seq.) of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

The Indian Employment, Training and Related Services Demonstration Act of 1992, referred to in subsec. (f), is Pub. L. 102-477, Oct. 23, 1992, 106 Stat. 2302, as amended, which is classified generally to chapter 36 (§3401 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 3401 of Title 25 and Tables.

This Act, referred to in subsec. (g)(1), is Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 936, as amended, known as the Workforce Investment Act of 1998. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

This chapter, referred to in subsec. (h)(3)(A), (6), was in the original “this title” meaning title I of Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 939, as amended, which enacted this chapter, repealed sections 1501 to 1505, 1511 to 1583, 1592 to 1735, 1737 to 1791h, 1792 to 1792b, 2301 to 2314 of this title, section 211 of Title 40, Appendix, Public Buildings, Property, and Works, sections 11421, 11441 to 11447, 11449, 11450, 11461 to 11466, 11471, and 11472 of Title 42, The Public Health and Welfare, and sections 42101 to 42106 of Title 49, Transportation, enacted provisions set out as notes under sections 1501, 2301, and 2940 of this title and section 11421 of Title 42, and repealed provisions set out as notes under sections 801 and 2301 of this title and section 1255a of Title 8, Aliens and Nationality. For complete classification of title I to the Code, see Tables.

The Federal Advisory Committee Act, referred to in subsec. (h)(4)(G), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

The Single Audit Act of 1984, referred to in subsec. (i), is Pub. L. 98-502, Oct. 19, 1984, 98 Stat. 2327, which is classified generally to chapter 75 (§7501 et seq.) of Title 31, Money and Finance. For complete classification of this Act to the Code, see Short Title note set out under section 7501 of Title 31 and Tables.

### AMENDMENTS

1998—Subsec. (h)(3)(A). Pub. L. 105-277 substituted “subparagraph (B)” for “paragraph (2)”.

### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2852, 2914, 2915, 2918, 2919 of this title.

## § 2912. Migrant and seasonal farmworker programs

### (a) In general

Every 2 years, the Secretary shall, on a competitive basis, make grants to, or enter into contracts with, eligible entities to carry out the activities described in subsection (d) of this section.

### (b) Eligible entities

To be eligible to receive a grant or enter into a contract under this section, an entity shall have an understanding of the problems of eligible migrant and seasonal farmworkers (including dependents), a familiarity with the area to be served, and the ability to demonstrate a capacity to administer effectively a diversified program of workforce investment activities (including youth activities) and related assistance for eligible migrant and seasonal farmworkers.

### (c) Program plan

#### (1) In general

To be eligible to receive a grant or enter into a contract under this section, an entity described in subsection (b) of this section shall submit to the Secretary a plan that describes a 2-year strategy for meeting the needs of eligible migrant and seasonal farmworkers in the area to be served by such entity.

#### (2) Contents

Such plan shall—

(A) identify the education and employment needs of the population to be served and the manner in which the services to be provided will strengthen the ability of the eligible migrant and seasonal farmworkers and dependents to obtain or retain unsubsidized employment or stabilize their unsubsidized employment;

(B) describe the related assistance and supportive services to be provided and the manner in which such assistance and services are to be integrated and coordinated with other appropriate services; and

(C) describe the indicators of performance to be used to assess the performance of such entity in carrying out the activities assisted under this section.

#### (3) Administration

Grants and contracts awarded under this section shall be centrally administered by the Department of Labor and competitively awarded by the Secretary using procedures consistent with standard Federal Government competitive procurement policies.

#### (4) Competition

##### (A) In general

The competition for grants made and contracts entered into under this section shall be conducted every 2 years.

##### (B) Exception

Notwithstanding subparagraph (A), if a recipient of such a grant or contract has performed satisfactorily under the terms of the grant agreement or contract, the Secretary may waive the requirement for such competition for such recipient upon receipt from the recipient of a satisfactory 2-year plan described in paragraph (1) for the succeeding 2-year grant or contract period. The Secretary may exercise the waiver authority of the preceding sentence not more than once during any 4-year period with respect to any single recipient.

#### (d) Authorized activities

Funds made available under this section and section 2852(b)(1)(A)(iii) of this title shall be

used to carry out workforce investment activities (including youth activities) and provide related assistance for eligible migrant and seasonal farmworkers, which may include employment, training, educational assistance, literacy assistance, an English language program, worker safety training, housing, supportive services, dropout prevention activities, followup services for those individuals placed in employment, self-employment and related business enterprise development education as needed by eligible migrant and seasonal farmworkers and identified pursuant to the plan required by subsection (c) of this section, and technical assistance relating to capacity enhancement in such areas as management information technology.

**(e) Consultation with Governors and local boards**

In making grants and entering into contracts under this section, the Secretary shall consult with the Governors and local boards of the States in which the eligible entities will carry out the activities described in subsection (d) of this section.

**(f) Regulations**

The Secretary shall consult with eligible migrant and seasonal farmworkers groups and States in establishing regulations to carry out this section, including performance measures for eligible entities that take into account the economic circumstances and demographics of eligible migrant and seasonal farmworkers.

**(g) Compliance with single audit requirements; related requirement**

Grants and contracts entered into under this section shall be subject to the requirements of chapter 75 of subtitle V of title 31 (enacted by the Single Audit Act of 1984) and charging of costs under this section shall be subject to appropriate circulars issued by the Office of Management and Budget.

**(h) Definitions**

In this section:

**(1) Disadvantaged**

The term “disadvantaged”, used with respect to a farmworker, means a farmworker whose income, for 12 consecutive months out of the 24 months prior to application for the program involved, does not exceed the higher of—

(A) the poverty line (as defined in section 334(a)(2)(B))<sup>1</sup> for an equivalent period; or

(B) 70 percent of the lower living standard income level, for an equivalent period.

**(2) Eligible migrant and seasonal farmworkers**

The term “eligible migrant and seasonal farmworkers” means individuals who are eligible migrant farmworkers or are eligible seasonal farmworkers.

**(3) Eligible migrant farmworker**

The term “eligible migrant farmworker” means—

(A) an eligible seasonal farmworker described in paragraph (4)(A) whose agricul-

tural labor requires travel to a job site such that the farmworker is unable to return to a permanent place of residence within the same day; and

(B) a dependent of the farmworker described in subparagraph (A).

**(4) Eligible seasonal farmworker**

The term “eligible seasonal farmworker” means—

(A) a disadvantaged person who, for 12 consecutive months out of the 24 months prior to application for the program involved, has been primarily employed in agricultural labor that is characterized by chronic unemployment or underemployment; and

(B) a dependent of the person described in subparagraph (A).

(Pub. L. 105-220, title I, §167, Aug. 7, 1998, 112 Stat. 1025; Pub. L. 105-277, div. A, §101(f) [title VIII, §401(8)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-411.)

REFERENCES IN TEXT

The Single Audit Act of 1984, referred to in subsec. (g), is Pub. L. 98-502, Oct. 19, 1984, 98 Stat. 2327, which is classified generally to chapter 75 (§7501 et seq.) of Title 31, Money and Finance. For complete classification of this Act to the Code, see Short Title note set out under section 7501 of Title 31 and Tables.

Section 334, referred to in subsec. (h)(1)(A), is section 334 of Pub. L. 105-220, which is set out as a note under section 2701 of this title. However, section 334 does not contain a subsec. (a)(2)(B) and does not define the term “poverty line”. “Poverty line” is defined for purposes of this chapter in section 2801 of this title.

AMENDMENTS

1998—Subsec. (d). Pub. L. 105-277 inserted “and section 2852(b)(1)(A)(iii) of this title” after “this section”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2852, 2915, 2919 of this title; title 20 section 1070d-2.

**§ 2913. Veterans’ workforce investment programs**

**(a) Authorization**

**(1) In general**

The Secretary shall conduct, directly or through grants or contracts, programs to meet the needs for workforce investment activities of veterans with service-connected disabilities, veterans who have significant barriers to employment, veterans who served on active duty in the armed forces during a war or in a campaign or expedition for which a campaign badge has been authorized, and recently separated veterans.

**(2) Conduct of programs**

Programs supported under this section may be conducted through grants and contracts with public agencies and private nonprofit organizations, including recipients of Federal assistance under other provisions of this chapter, that the Secretary determines have an understanding of the unemployment problems of veterans described in paragraph (1), familiarity with the area to be served, and the capability to administer effectively a program of workforce investment activities for such veterans.

<sup>1</sup> See References in Text note below.

**(3) Required activities**

Programs supported under this section shall include—

(A) activities to enhance services provided to veterans by other providers of workforce investment activities funded by Federal, State, or local government;

(B) activities to provide workforce investment activities to such veterans that are not adequately provided by other public providers of workforce investment activities; and

(C) outreach and public information activities to develop and promote maximum job and job training opportunities for such veterans and to inform such veterans about employment, job training, on-the-job training and educational opportunities under this chapter, under title 38, and under other provisions of law, which activities shall be coordinated with activities provided through the one-stop centers described in section 2864(c) of this title.

**(b) Administration of programs****(1) In general**

The Secretary shall administer programs supported under this section through the Assistant Secretary for Veterans' Employment and Training.

**(2) Additional responsibilities**

In carrying out responsibilities under this section, the Assistant Secretary for Veterans' Employment and Training shall—

(A) be responsible for the awarding of grants and contracts and the distribution of funds under this section and for the establishment of appropriate fiscal controls, accountability, and program performance measures for recipients of grants and contracts under this section; and

(B) consult with the Secretary of Veterans Affairs and take steps to ensure that programs supported under this section are coordinated, to the maximum extent feasible, with related programs and activities conducted under title 38, including programs and activities conducted under subchapter II of chapter 77 of such title, chapters 30, 31, 32, and 34 of such title, and sections 1712A, 1720A, 3687, and 4103A of such title.

(Pub. L. 105-220, title I, §168, Aug. 7, 1998, 112 Stat. 1027.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 2915, 2919 of this title.

**§ 2914. Youth opportunity grants****(a) Grants****(1) In general**

Using funds made available under section 2852(b)(1)(A) of this title, the Secretary shall make grants to eligible local boards and eligible entities described in subsection (d) of this section to provide activities described in subsection (b) of this section for youth to increase the long-term employment of youth who live in empowerment zones, enterprise communities, and high poverty areas and who seek assistance.

**(2) Definition**

In this section, the term “youth” means an individual who is not less than age 14 and not more than age 21.

**(3) Grant period**

The Secretary may make a grant under this section for a 1-year period, and may renew the grant for each of the 4 succeeding years.

**(4) Grant awards**

In making grants under this section, the Secretary shall ensure that grants are distributed equitably among local boards and entities serving urban areas and local boards and entities serving rural areas, taking into consideration the poverty rate in such urban and rural areas, as described in subsection (c)(3)(B) of this section.

**(b) Use of funds****(1) In general**

A local board or entity that receives a grant under this section shall use the funds made available through the grant to provide activities that meet the requirements of section 2854 of this title, except as provided in paragraph (2), as well as youth development activities such as activities relating to leadership development, citizenship, and community service, and recreation activities.

**(2) Intensive placement and followup services**

In providing activities under this section, a local board or entity shall provide—

(A) intensive placement services; and

(B) followup services for not less than 24 months after the completion of participation in the other activities described in this subsection, as appropriate.

**(c) Eligible local boards**

To be eligible to receive a grant under this section, a local board shall serve a community that—

(1) has been designated as an empowerment zone or enterprise community under section 1391 of title 26;

(2)(A) is a State without a zone or community described in paragraph (1); and

(B) has been designated as a high poverty area by the Governor of the State; or

(3) is 1 of 2 areas in a State that—

(A) have been designated by the Governor as areas for which a local board may apply for a grant under this section; and

(B) meet the poverty rate criteria set forth in subsections (a)(4), (b), and (d) of section 1392 of title 26.

**(d) Eligible entities**

To be eligible to receive a grant under this section, an entity (other than a local board) shall—

(1) be a recipient of financial assistance under section 2911 of this title; and

(2) serve a community that—

(A) meets the poverty rate criteria set forth in subsections (a)(4), (b), and (d) of section 1392 of title 26; and

(B) is located on an Indian reservation or serves Oklahoma Indians or Alaska Natives.

**(e) Application**

To be eligible to receive a grant under this section, a local board or entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require, including—

(1) a description of the activities that the local board or entity will provide under this section to youth in the community described in subsection (c) of this section;

(2) a description of the performance measures negotiated under subsection (f) of this section, and the manner in which the local boards or entities will carry out the activities to meet the performance measures;

(3) a description of the manner in which the activities will be linked to activities described in section 2854 of this title; and

(4) a description of the community support, including financial support through leveraging additional public and private resources, for the activities.

**(f) Performance measures****(1) In general**

The Secretary shall negotiate and reach agreement with the local board or entity on performance measures for the indicators of performance referred to in subparagraphs (A) and (B) of section 2871(b)(2) of this title that will be used to evaluate the performance of the local board or entity in carrying out the activities described in subsection (b) of this section. Each local performance measure shall consist of such a<sup>1</sup> indicator of performance, and a performance level referred to in paragraph (2).

**(2) Performance levels**

The Secretary shall negotiate and reach agreement with the local board or entity regarding the levels of performance expected to be achieved by the local board or entity on the indicators of performance.

**(g) Role model academy project****(1) In general**

Using the funds made available pursuant to section 2852(b)(1)(A)(iv) of this title for fiscal year 1999, the Secretary shall provide assistance to an entity to carry out a project establishing a role model academy for out-of-school youth.

**(2) Residential center**

The entity shall use the assistance to establish an academy that consists of a residential center located on the site of a military installation closed or realigned pursuant to a law providing for closures and realignments of such installations.

**(3) Services**

The academy established pursuant to this subsection shall provide services that—

(A) utilize a military style model that emphasizes leadership skills and discipline, or another model of demonstrated effectiveness; and

(B) include vocational training, secondary school course work leading to a secondary

school diploma or recognized equivalent, and the use of mentors who serve as role models and who provide academic training and career counseling to the youth.

(Pub. L. 105-220, title I, §169, Aug. 7, 1998, 112 Stat. 1028; Pub. L. 106-113, div. B, §1000(a)(4) [title V, §518], Nov. 29, 1999, 113 Stat. 1535, 1501A-276.)

**AMENDMENTS**

1999—Subsec. (d)(2)(B). Pub. L. 106-113 substituted “or Alaska Natives.” for “or Alaska Native villages or Native groups (as such terms are defined in section 1602 of title 43).”

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 2822, 2852, 2915 of this title.

**§ 2915. Technical assistance****(a) General technical assistance****(1) In general**

The Secretary shall provide, coordinate, and support the development of, appropriate training, technical assistance, staff development, and other activities, including assistance in replicating programs of demonstrated effectiveness, to States and localities, and, in particular, to assist States in making transitions from carrying out activities under the provisions of law repealed under section 199<sup>1</sup> to carrying out activities under this chapter.

**(2) Form of assistance**

In carrying out paragraph (1) on behalf of a State, or recipient of financial assistance under any of sections 2911 through 2914 of this title, the Secretary, after consultation with the State or grant recipient, may award grants and enter into contracts and cooperative agreements.

**(3) Limitation**

Grants or contracts awarded under paragraph (1) to entities other than States or local units of government that are for amounts in excess of \$100,000 shall only be awarded on a competitive basis.

**(b) Dislocated worker technical assistance****(1) Authority**

Of the amounts available pursuant to section 2862(a)(2) of this title, the Secretary shall reserve not more than 5 percent of such amounts to provide technical assistance to States that do not meet the State performance measures described in section 2871 of this title with respect to employment and training activities for dislocated workers. Using such reserved funds, the Secretary may provide such assistance to other States, local areas, and other entities involved in providing assistance to dislocated workers, to promote the continuous improvement of assistance provided to dislocated workers, under this chapter.

**(2) Training**

Amounts reserved under this subsection may be used to provide for the training of staff, in-

<sup>1</sup> So in original. Probably should be “an”.

<sup>1</sup> See References in Text note below.

cluding specialists, who provide rapid response services. Such training shall include instruction in proven methods of promoting, establishing, and assisting labor-management committees. Such projects shall be administered through the dislocated worker office described in section 2918(b) of this title.

(Pub. L. 105-220, title I, §170, Aug. 7, 1998, 112 Stat. 1030; Pub. L. 105-277, div. A, §101(f) [title VIII, §401(9), (10)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-411.)

#### REFERENCES IN TEXT

Section 199, referred to in subsec. (a)(1), is section 199 of Pub. L. 105-220, title I, Aug. 7, 1998, 112 Stat. 1058. Section 199 repealed sections 1501 to 1505, 1511 to 1583, 1592 to 1735, 1737, 1751 to 1791h, 1792 to 1792b, and 2301 to 2314 of this title, section 211 of Title 40, Appendix, Public Buildings, Property, and Works, sections 11421, 11441 to 11447, 11449, 11450, 11461 to 11466, 11471, and 11472 of Title 42, The Public Health and Welfare, sections 42101 to 42106 of Title 49, Transportation, and provisions set out as notes under sections 801, 1501, and 2301 of this title and section 1255a of Title 8, Aliens and Nationality. For complete classification of this section to the Code, see Tables.

#### AMENDMENTS

1998—Subsec. (a)(1). Pub. L. 105-277, §101(f) [title VIII, §401(9)], substituted “carrying out activities under this chapter” for “carry out activities under this chapter”. Subsec. (b)(2). Pub. L. 105-277, §101(f) [title VIII, §401(10)], substituted “section 2918(b)” for “section 2919(b)”.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2862, 2871, 2919 of this title.

### § 2916. Demonstration, pilot, multiservice, research, and multistate projects

#### (a) Strategic plan

##### (1) In general

After consultation with States, localities, and other interested parties, the Secretary shall, every 2 years, publish in the Federal Register, a plan that describes the demonstration and pilot (including dislocated worker demonstration and pilot), multiservice, research, and multistate project priorities of the Department of Labor concerning employment and training for the 5-year period following the submission of the plan. Copies of the plan shall be transmitted to the appropriate committees of Congress.

##### (2) Factors

The plan published under paragraph (1) shall contain strategies to address national employment and training problems and take into account factors such as—

- (A) the availability of existing research (as of the date of the publication);
- (B) the need to ensure results that have interstate validity;
- (C) the benefits of economies of scale and the efficiency of proposed projects; and
- (D) the likelihood that the results of the projects will be useful to policymakers and stakeholders in addressing employment and training problems.

#### (b) Demonstration and pilot projects

##### (1) In general

Under a plan published under subsection (a) of this section, the Secretary shall, through grants or contracts, carry out demonstration and pilot projects for the purpose of developing and implementing techniques and approaches, and demonstrating the effectiveness of specialized methods, in addressing employment and training needs. Such projects shall include the provision of direct services to individuals to enhance employment opportunities and an evaluation component and may include—

(A) the establishment of advanced manufacturing technology skill centers developed through local partnerships of industry, labor, education, community-based organizations, and economic development organizations to meet unmet, high-tech skill needs of local communities;

(B) projects that provide training to upgrade the skills of employed workers who reside and are employed in enterprise communities or empowerment zones;

(C) programs conducted jointly with the Department of Defense to develop training programs utilizing computer-based and other innovative learning technologies;

(D) projects that promote the use of distance learning, enabling students to take courses through the use of media technology such as videos, teleconferencing computers, and the Internet;

(E) projects that assist in providing comprehensive services to increase the employment rates of out-of-school youth residing in targeted high poverty areas within empowerment zones and enterprise communities;

(F) the establishment of partnerships with national organizations with special expertise in developing, organizing, and administering employment and training services, for individuals with disabilities, at the national, State, and local levels;

(G) projects to assist public housing authorities that provide, to public housing residents, job training programs that demonstrate success in upgrading the job skills and promoting employment of the residents; and

(H) projects that assist local areas to develop and implement local self-sufficiency standards to evaluate the degree to which participants in programs under this chapter are achieving self-sufficiency.

##### (2) Limitations

###### (A) Competitive awards

Grants or contracts awarded for carrying out demonstration and pilot projects under this subsection shall be awarded in accordance with generally applicable Federal requirements.

###### (B) Eligible entities

Grants or contracts may be awarded under this subsection only to—

- (i) entities with recognized expertise in—
  - (I) conducting national demonstration projects;

- (II) utilizing state-of-the-art demonstration methods; or
- (III) conducting evaluations of workforce investment projects; or

(ii) State and local entities with expertise in operating or overseeing workforce investment programs.

**(C) Time limits**

The Secretary shall establish appropriate time limits for carrying out demonstration and pilot projects under this subsection.

**(c) Multiservice projects, research projects, and multistate projects**

**(1) Multiservice projects**

Under a plan published under subsection (a) of this section, the Secretary shall, through grants or contracts, carry out multiservice projects—

(A) that will test an array of approaches to the provision of employment and training services to a variety of targeted populations;

(B) in which the entity carrying out the project, in conjunction with employers, organized labor, and other groups such as the disability community, will design, develop, and test various training approaches in order to determine effective practices; and

(C) that will assist in the development and replication of effective service delivery strategies for targeted populations for the national employment and training system as a whole.

**(2) Research projects**

**(A) In general**

Under a plan published under subsection (a) of this section, the Secretary shall, through grants or contracts, carry out research projects that will contribute to the solution of employment and training problems in the United States.

**(B) Formula improvement study and report**

**(i) Study**

The Secretary shall conduct a 2-year study concerning improvements in the formulas described in section 2862(b)(1)(B) of this title and paragraphs (2)(A) and (3) of section 2863(b) of this title (regarding distributing funds under subchapter II of this chapter to States and local areas for adult employment and training activities). In conducting the study, the Secretary shall examine means of improving the formulas by—

(I) developing formulas based on statistically reliable data;

(II) developing formulas that are consistent with the goals and objectives of this chapter; and

(III) developing formulas based on organizational and financial stability of State boards and local boards.

**(ii) Report**

The Secretary shall prepare and submit to Congress a report containing the results of the study, including recommendations for improved formulas.

**(3) Multistate projects**

**(A) In general**

**(i) Authority**

Under a plan published under subsection (a) of this section, the Secretary may, through grants or contracts, carry out multistate projects that require demonstrated expertise that is available at the national level to effectively disseminate best practices and models for implementing employment and training services, address the specialized employment and training needs of particular service populations, or address industry-wide skill shortages.

**(ii) Design of grants**

Grants or contracts awarded under this subsection shall be designed to obtain information relating to the provision of services under different economic conditions or to various demographic groups in order to provide guidance at the national and State levels about how best to administer specific employment and training services.

**(4) Limitations**

**(A) Competitive awards**

Grants or contracts awarded for carrying out projects under this subsection in amounts that exceed \$100,000 shall be awarded only on a competitive basis, except that a noncompetitive award may be made in the case of a project that is funded jointly with other public or private sector entities that provide a substantial portion of assistance under the grant or contract for the project.

**(B) Time limits**

A grant or contract shall not be awarded under this subsection to the same organization for more than 3 consecutive years unless such grant or contract is competitively reevaluated within such period.

**(C) Peer review**

**(i) In general**

The Secretary shall utilize a peer review process—

(I) to review and evaluate all applications for grants in amounts that exceed \$500,000 that are submitted under this section; and

(II) to review and designate exemplary and promising programs under this section.

**(ii) Availability of funds**

The Secretary is authorized to use funds provided under this section to carry out peer review activities under this subparagraph.

**(D) Priority**

In awarding grants or contracts under this subsection, priority shall be provided to entities with nationally recognized expertise in the methods, techniques, and knowledge of workforce investment activities and shall include appropriate time limits, established

by the Secretary, for the duration of such projects.

**(d) Dislocated worker projects**

Of the amount made available pursuant to section 2862(a)(2)(A) of this title for any program year, the Secretary shall use not more than 10 percent of such amount to carry out demonstration and pilot projects, multiservice projects, and multistate projects, relating to the employment and training needs of dislocated workers. Of the requirements of this section, such projects shall be subject only to the provisions relating to review and evaluation of applications under subsection (c)(4)(C) of this section. Such projects may include demonstration and pilot projects relating to promoting self-employment, promoting job creation, averting dislocations, assisting dislocated farmers, assisting dislocated fishermen, and promoting public works. Such projects shall be administered through the dislocated worker office described in section 2918(b) of this title.

(Pub. L. 105-220, title I, §171, Aug. 7, 1998, 112 Stat. 1031; Pub. L. 105-277, div. A, §101(f) [title VIII, §401(11)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-411.)

**AMENDMENTS**

1998—Subsec. (b)(2)(A). Pub. L. 105-277, which directed the amendment of subsec. (b)(2) of this section by substituting “in accordance with generally applicable Federal requirements.” for “only on a competitive” and all that follows through the period”, was executed to subsec. (b)(2)(A) by making the substitution for “only on a competitive basis, except that a noncompetitive award may be made in the case of a project that is funded jointly with other public or private sector entities that provide a portion of the funding for the project.”, to reflect the probable intent of Congress.

**DEMONSTRATION PROGRAMS AND PROJECTS TO PROVIDE TECHNICAL SKILLS TRAINING FOR WORKERS**

Pub. L. 105-277, div. C, title IV, §414(c), Oct. 21, 1998, 112 Stat. 2681-653, provided that:

“(1) **IN GENERAL.**—In establishing demonstration programs under section 452(c) of the Job Training Partnership Act (29 U.S.C. 1732(c)), as in effect on the date of the enactment of this Act [Oct. 21, 1998], or demonstration programs or projects under section 171(b) of the Workforce Investment Act of 1998 [29 U.S.C. 2916(b)], the Secretary of Labor shall use funds available under section 286(s)(2) [probably means section 286(s)(2) of the Immigration and Nationality Act which is classified to section 1356(s)(2) of Title 8, Aliens and Nationality] to establish demonstration programs or projects to provide technical skills training for workers, including both employed and unemployed workers.

“(2) **GRANTS.**—The Secretary of Labor shall award grants to carry out the programs and projects described in paragraph (1) to—

“(A)(i) private industry councils established under section 102 of the Job Training Partnership Act (29 U.S.C. 1512), as in effect on the date of the enactment of this Act [Oct. 21, 1998]; or

“(ii) local boards that will carry out such programs or projects through one-stop delivery systems established under section 121 of the Workforce Investment Act of 1998 [29 U.S.C. 2841]; or

“(B) regional consortia of councils or local boards described in subparagraph (A).”

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 2862, 2917, 2919, 2939 of this title.

**§ 2917. Evaluations**

**(a) Programs and activities carried out under this chapter**

For the purpose of improving the management and effectiveness of programs and activities carried out under this chapter, the Secretary shall provide for the continuing evaluation of the programs and activities, including those programs and activities carried out under section 2916 of this title. Such evaluations shall address—

(1) the general effectiveness of such programs and activities in relation to their cost, including the extent to which the programs and activities—

(A) improve the employment competencies of participants in comparison to comparably-situated individuals who did not participate in such programs and activities; and

(B) to the extent feasible, increase the level of total employment over the level that would have existed in the absence of such programs and activities;

(2) the effectiveness of the performance measures relating to such programs and activities;

(3) the effectiveness of the structure and mechanisms for delivery of services through such programs and activities;

(4) the impact of the programs and activities on the community and participants involved;

(5) the impact of such programs and activities on related programs and activities;

(6) the extent to which such programs and activities meet the needs of various demographic groups; and

(7) such other factors as may be appropriate.

**(b) Other programs and activities**

The Secretary may conduct evaluations of other federally funded employment-related programs and activities under other provisions of law.

**(c) Techniques**

Evaluations conducted under this section shall utilize appropriate methodology and research designs, including the use of control groups chosen by scientific random assignment methodologies. The Secretary shall conduct at least 1 multisite control group evaluation under this section by the end of fiscal year 2005.

**(d) Reports**

The entity carrying out an evaluation described in subsection (a) or (b) of this section shall prepare and submit to the Secretary a draft report and a final report containing the results of the evaluation.

**(e) Reports to Congress**

Not later than 30 days after the completion of such a draft report, the Secretary shall transmit the draft report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate. Not later than 60 days after the completion of such a final report, the Secretary shall transmit the final report to such committees of the Congress.

**(f) Coordination**

The Secretary shall ensure the coordination of evaluations carried out by States pursuant to

section 2871(e) of this title with the evaluations carried out under this section.

(Pub. L. 105-220, title I, § 172, Aug. 7, 1998, 112 Stat. 1034.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2864, 2871, 2919, 2939 of this title.

### § 2918. National emergency grants

#### (a) In general

The Secretary is authorized to award national emergency grants in a timely manner—

(1) to an entity described in subsection (c) of this section to provide employment and training assistance to workers affected by major economic dislocations, such as plant closures, mass layoffs, or closures and realignments of military installations;

(2) to provide assistance to the Governor of any State within the boundaries of which is an area that has suffered an emergency or a major disaster as defined in paragraphs (1) and (2), respectively, of section 5122 of title 42 (referred to in this section as the “disaster area”) to provide disaster relief employment in the area; and

(3) to provide additional assistance to a State or local board for eligible dislocated workers in a case in which the State or local board has expended the funds provided under this section to carry out activities described in paragraphs (1) and (2) and can demonstrate the need for additional funds to provide appropriate services for such workers, in accordance with requirements prescribed by the Secretary.

#### (b) Administration

The Secretary shall designate a dislocated worker office to coordinate the functions of the Secretary under this chapter relating to employment and training activities for dislocated workers, including activities carried out under the national emergency grants.

#### (c) Employment and training assistance requirements

##### (1) Grant recipient eligibility

###### (A) Application

To be eligible to receive a grant under subsection (a)(1) of this section, an entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

###### (B) Eligible entity

In this paragraph, the term “entity” means a State, a local board, an entity described in section 2911(c) of this title, entities determined to be eligible by the Governor of the State involved, and other entities that demonstrate to the Secretary the capability to effectively respond to the circumstances relating to particular dislocations.

##### (2) Participant eligibility

###### (A) In general

In order to be eligible to receive employment and training assistance under a na-

tional emergency grant awarded pursuant to subsection (a)(1) of this section, an individual shall be—

(i) a dislocated worker;

(ii) a civilian employee of the Department of Defense or the Department of Energy employed at a military installation that is being closed, or that will undergo realignment, within the next 24 months after the date of the determination of eligibility;

(iii) an individual who is employed in a nonmanagerial position with a Department of Defense contractor, who is determined by the Secretary of Defense to be at-risk of termination from employment as a result of reductions in defense expenditures, and whose employer is converting operations from defense to nondefense applications in order to prevent worker layoffs; or

(iv) a member of the Armed Forces who—

(I) was on active duty or full-time National Guard duty;

(II)(aa) is involuntarily separated (as defined in section 1141 of title 10) from active duty or full-time National Guard duty; or

(bb) is separated from active duty or full-time National Guard duty pursuant to a special separation benefits program under section 1174a of title 10 or the voluntary separation incentive program under section 1175 of that title;

(III) is not entitled to retired or retained pay incident to the separation described in subclause (II); and

(IV) applies for such employment and training assistance before the end of the 180-day period beginning on the date of that separation.

#### (B) Retraining assistance

The individuals described in subparagraph (A)(iii) shall be eligible for retraining assistance to upgrade skills by obtaining marketable skills needed to support the conversion described in subparagraph (A)(iii).

#### (C) Additional requirements

The Secretary shall establish and publish additional requirements related to eligibility for employment and training assistance under the national emergency grants to ensure effective use of the funds available for this purpose.

#### (D) Definitions

In this paragraph, the terms “military institution”<sup>1</sup> and “realignment” have the meanings given the terms in section 2910 of the Defense Base Closure and Realignment Act of 1990 (Public Law 101-510; 10 U.S.C. 2687 note).

#### (d) Disaster relief employment assistance requirements

##### (1) In general

Funds made available under subsection (a)(2) of this section—

<sup>1</sup> So in original. Probably should be “military installation”.



(A) shall be used to provide disaster relief employment on projects that provide food, clothing, shelter, and other humanitarian assistance for disaster victims, and projects regarding demolition, cleaning, repair, renovation, and reconstruction of damaged and destroyed structures, facilities, and lands located within the disaster area;

(B) may be expended through public and private agencies and organizations engaged in such projects; and

(C) may be expended to provide employment and training activities.

#### **(2) Eligibility**

An individual shall be eligible to be offered disaster relief employment under subsection (a)(2) of this section if such individual is a dislocated worker, is a long-term unemployed individual, or is temporarily or permanently laid off as a consequence of the disaster.

#### **(3) Limitations on disaster relief employment**

No individual shall be employed under subsection (a)(2) of this section for more than 6 months for work related to recovery from a single natural disaster.

### **(e) Additional assistance**

#### **(1) In general**

From the amount appropriated and made available to carry out this section for any program year, the Secretary shall use not more than \$15,000,000 to make grants to not more than 8 States to provide employment and training activities under section 2864 of this title, in accordance with subchapter II of this chapter.

#### **(2) Eligible States**

The Secretary shall make a grant under paragraph (1) to a State for a program year if—

(A)(i) the amount of the allotment that would be made to the State for the program year under the formula specified in section 1602(a) of this title, as in effect on July 1, 1998; is greater than

(ii) the amount of the allotment that would be made to the State for the program year under the formula specified in section 2862(b)(1)(B) of this title; and

(B) the State is 1 of the 8 States with the greatest quotient obtained by dividing—

(i) the amount described in subparagraph (A)(i); by

(ii) the amount described in subparagraph (A)(ii).

#### **(3) Amount of grants**

Subject to paragraph (1), the amount of the grant made under paragraph (1) to a State for a program year shall be based on the difference between—

(A) the amount of the allotment that would be made to the State for the program year under the formula specified in section 1602(a) of this title, as in effect on July 1, 1998; and

(B) the amount of the allotment that would be made to the State for the program year under the formula specified in section 2862(b)(1)(B) of this title.

#### **(4) Allocation of funds**

A State that receives a grant under paragraph (1) for a program year—

(A) shall allocate funds made available through the grant on the basis of the formula used by the State to allocate funds within the State for that program year under—

(i) paragraph (2)(A) or (3) of section 2863(b) of this title; or

(ii) paragraph (2)(B) of section 2863(b) of this title; and

(B) shall use the funds in the same manner as the State uses other funds allocated under the appropriate paragraph of section 2863(b) of this title.

(Pub. L. 105-220, title I, §173, Aug. 7, 1998, 112 Stat. 1035; Pub. L. 105-277, div. A, §101(f) [title VIII, §401(12)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-411, 2681-435.)

#### **AMENDMENTS**

1998—Subsec. (a)(2). Pub. L. 105-277, §101(f) [title VIII, §401(12)], made technical amendment to reference in original act which appears in text as reference to section 5122 of title 42.

Subsec. (e). Pub. L. 105-277, §101(f) [title VIII], added subsec. (e).

#### **SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 2862, 2915, 2916 of this title.

### **§ 2919. Authorization of appropriations**

#### **(a) Native American programs; migrant and seasonal farmworker programs; veterans' workforce investment programs**

##### **(1) In general**

Subject to paragraph (2), there are authorized to be appropriated to carry out sections 2911 through 2913 of this title such sums as may be necessary for each of the fiscal years 1999 through 2003.

##### **(2) Reservations**

Of the amount appropriated pursuant to the authorization of appropriations under paragraph (1) for a fiscal year, the Secretary shall—

(A) reserve not less than \$55,000,000 for carrying out section 2911 of this title;

(B) reserve not less than \$70,000,000 for carrying out section 2912 of this title; and

(C) reserve not less than \$7,300,000 for carrying out section 2913 of this title.

#### **(b) Technical assistance; demonstration and pilot projects; evaluations; incentive grants**

##### **(1) In general**

Subject to paragraph (2), there are authorized to be appropriated to carry out sections 2915 through 2917 of this title and section 9273 of title 20 such sums as may be necessary for each of the fiscal years 1999 through 2003.

##### **(2) Reservations**

Of the amount appropriated pursuant to the authorization of appropriations under paragraph (1) for a fiscal year, the Secretary shall—

(A)(i) for fiscal year 1999, reserve up to 40 percent for carrying out section 2915 of this title (other than subsection (b) of such section);

(ii) for fiscal year 2000, reserve up to 25 percent for carrying out section 2915 of this title (other than subsection (b) of such section); and

(iii) for each of the fiscal years 2001 through 2003, reserve up to 20 percent for carrying out section 2915 of this title (other than subsection (b) of such section);

(B)(i) for fiscal year 1999, reserve not less than 50 percent for carrying out section 2916 of this title; and

(ii) for each of the fiscal years 2000 through 2003, reserve not less than 45 percent for carrying out section 2916 of this title;

(C)(i) for fiscal year 1999, reserve not less than 10 percent for carrying out section 2917 of this title; and

(ii) for each of the fiscal years 2000 through 2003, reserve not less than 10 percent for carrying out section 2917 of this title; and

(D)(i) for fiscal year 1999, reserve no funds for carrying out section 9273 of title 20;

(ii) for fiscal year 2000, reserve up to 20 percent for carrying out section 9273 of title 20; and

(iii) for each of the fiscal years 2001 through 2003, reserve up to 25 percent for carrying out section 9273 of title 20.

(Pub. L. 105-220, title I, § 174, Aug. 7, 1998, 112 Stat. 1037.)

#### SUBCHAPTER V—ADMINISTRATION

### § 2931. Requirements and restrictions

#### (a) Benefits

##### (1) Wages

##### (A) In general

Individuals in on-the-job training or individuals employed in activities under this chapter shall be compensated at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills, and such rates shall be in accordance with applicable law, but in no event less than the higher of the rate specified in section 206(a)(1) of this title or the applicable State or local minimum wage law.

##### (B) Rule of construction

The reference in subparagraph (A) to section 206(a)(1) of this title—

(i) shall be deemed to be a reference to section 206(a)(3) of this title for individuals in American Samoa; and

(ii) shall not be applicable for individuals in other territorial jurisdictions in which section 206 of this title does not apply.

##### (2) Treatment of allowances, earnings, and payments

Allowances, earnings, and payments to individuals participating in programs under this chapter shall not be considered as income for the purposes of determining eligibility for and

the amount of income transfer and in-kind aid furnished under any Federal or federally assisted program based on need, other than as provided under the Social Security Act (42 U.S.C. 301 et seq.).

#### (b) Labor standards

##### (1) Limitations on activities that impact wages of employees

No funds provided under this chapter shall be used to pay the wages of incumbent employees during their participation in economic development activities provided through a statewide workforce investment system.

##### (2) Displacement

##### (A) Prohibition

A participant in a program or activity authorized under this chapter (referred to in this section as a “specified activity”) shall not displace (including a partial displacement, such as a reduction in the hours of nonovertime work, wages, or employment benefits) any currently employed employee (as of the date of the participation).

##### (B) Prohibition on impairment of contracts

A specified activity shall not impair an existing contract for services or collective bargaining agreement, and no such activity that would be inconsistent with the terms of a collective bargaining agreement shall be undertaken without the written concurrence of the labor organization and employer concerned.

##### (3) Other prohibitions

A participant in a specified activity shall not be employed in a job if—

(A) any other individual is on layoff from the same or any substantially equivalent job;

(B) the employer has terminated the employment of any regular employee or otherwise reduced the workforce of the employer with the intention of filling the vacancy so created with the participant; or

(C) the job is created in a promotional line that will infringe in any way upon the promotional opportunities of currently employed individuals (as of the date of the participation).

##### (4) Health and safety

Health and safety standards established under Federal and State law otherwise applicable to working conditions of employees shall be equally applicable to working conditions of participants engaged in specified activities. To the extent that a State workers’ compensation law applies, workers’ compensation shall be provided to participants on the same basis as the compensation is provided to other individuals in the State in similar employment.

##### (5) Employment conditions

Individuals in on-the-job training or individuals employed in programs and activities under this chapter, shall be provided benefits and working conditions at the same level and to the same extent as other trainees or employees working a similar length of time and doing the same type of work.

**(6) Opportunity to submit comments**

Interested members of the public, including representatives of businesses and of labor organizations, shall be provided an opportunity to submit comments to the Secretary with respect to programs and activities proposed to be funded under subchapter II of this chapter.

**(7) No impact on union organizing**

Each recipient of funds under this chapter shall provide to the Secretary assurances that none of such funds will be used to assist, promote, or deter union organizing.

**(c) Grievance procedure****(1) In general**

Each State and local area receiving an allotment under this chapter shall establish and maintain a procedure for grievances or complaints alleging violations of the requirements of this chapter from participants and other interested or affected parties. Such procedure shall include an opportunity for a hearing and be completed within 60 days after the filing of the grievance or complaint.

**(2) Investigation****(A) In general**

The Secretary shall investigate an allegation of a violation described in paragraph (1) if—

- (i) a decision relating to such violation has not been reached within 60 days after the date of the filing of the grievance or complaint and either party appeals to the Secretary; or
- (ii) a decision relating to such violation has been reached within such 60 days and the party to which such decision is adverse appeals such decision to the Secretary.

**(B) Additional requirement**

The Secretary shall make a final determination relating to an appeal made under subparagraph (A) no later than 120 days after receiving such appeal.

**(3) Remedies**

Remedies that may be imposed under this section for a violation of any requirement of this chapter shall be limited—

- (A) to suspension or termination of payments under this chapter;
- (B) to prohibition of placement of a participant with an employer that has violated any requirement under this chapter;
- (C) where applicable, to reinstatement of an employee, payment of lost wages and benefits, and reestablishment of other relevant terms, conditions, and privileges of employment; and
- (D) where appropriate, to other equitable relief.

**(4) Rule of construction**

Nothing in paragraph (3) shall be construed to prohibit a grievant or complainant from pursuing a remedy authorized under another Federal, State, or local law for a violation of this chapter.

**(d) Relocation****(1) Prohibition on use of funds to encourage or induce relocation**

No funds provided under this chapter shall be used, or proposed for use, to encourage or induce the relocation of a business or part of a business if such relocation would result in a loss of employment for any employee of such business at the original location and such original location is within the United States.

**(2) Prohibition on use of funds for customized or skill training and related activities after relocation**

No funds provided under this chapter for an employment and training activity shall be used for customized or skill training, on-the-job training, or company-specific assessments of job applicants or employees, for any business or part of a business that has relocated, until the date that is 120 days after the date on which such business commences operations at the new location, if the relocation of such business or part of a business results in a loss of employment for any employee of such business at the original location and such original location is within the United States.

**(3) Repayment**

If the Secretary determines that a violation of paragraph (1) or (2) has occurred, the Secretary shall require the State that has violated such paragraph to repay to the United States an amount equal to the amount expended in violation of such paragraph.

**(e) Limitation on use of funds**

No funds available under this chapter shall be used for employment generating activities, economic development activities, investment in revolving loan funds, capitalization of businesses, investment in contract bidding resource centers, and similar activities that are not directly related to training for eligible individuals under this chapter. No funds available under subchapter II of this chapter shall be used for foreign travel.

**(f) Testing and sanctioning for use of controlled substances****(1) In general**

Notwithstanding any other provision of law, a State shall not be prohibited by the Federal Government from—

- (A) testing participants in programs under subchapter II of this chapter for the use of controlled substances; and
- (B) sanctioning such participants who test positive for the use of such controlled substances.

**(2) Additional requirements****(A) Period of sanction**

In sanctioning participants in programs under subchapter II of this chapter who test positive for the use of controlled substances—

- (i) with respect to the first occurrence for which a participant tests positive, a State may exclude the participant from the program for a period not to exceed 6 months; and

(ii) with respect to the second occurrence and each subsequent occurrence for which a participant tests positive, a State may exclude the participant from the program for a period not to exceed 2 years.

**(B) Appeal**

The testing of participants and the imposition of sanctions under this subsection shall be subject to expeditious appeal in accordance with due process procedures established by the State.

**(C) Privacy**

A State shall establish procedures for testing participants for the use of controlled substances that ensure a maximum degree of privacy for the participants.

**(4)<sup>1</sup> Funding requirement**

In testing and sanctioning of participants for the use of controlled substances in accordance with this subsection, the only Federal funds that a State may use are the amounts made available for the administration of statewide workforce investment activities under section 2864(a)(3)(B) of this title.

(Pub. L. 105-220, title I, §181, Aug. 7, 1998, 112 Stat. 1038.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this title” meaning title I of Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 939, as amended, which enacted this chapter, repealed sections 1501 to 1505, 1511 to 1583, 1592 to 1735, 1737 to 1791h, 1792 to 1792b, 2301 to 2314 of this title, section 211 of Title 40, Appendix, Public Buildings, Property, and Works, sections 11421, 11441 to 11447, 11449, 11450, 11461 to 11466, 11471, and 11472 of Title 42, The Public Health and Welfare, and sections 42101 to 42106 of Title 49, Transportation, enacted provisions set out as notes under sections 1501, 2301, and 2940 of this title and section 11421 of Title 42, and repealed provisions set out as notes under sections 801 and 2301 of this title and section 1255a of Title 8, Aliens and Nationality. For complete classification of title I to the Code, see Tables.

The Social Security Act, referred to in subsec. (a)(2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 2014.

**§ 2932. Prompt allocation of funds**

**(a) Allotments based on latest available data**

All allotments to States and grants to outlying areas under this chapter shall be based on the latest available data and estimates satisfactory to the Secretary. All data relating to disadvantaged adults and disadvantaged youth shall be based on the most recent satisfactory data from the Bureau of the Census.

**(b) Publication in Federal Register relating to formula funds**

Whenever the Secretary allots funds required to be allotted under this chapter, the Secretary shall publish in a timely fashion in the Federal

Register the proposed amount to be distributed to each recipient of the funds.

**(c) Requirement for funds distributed by formula**

All funds required to be allotted under section 2852 or 2862 of this title shall be allotted within 45 days after the date of enactment of the Act appropriating the funds, except that, if such funds are appropriated in advance as authorized by section 2939(g) of this title, such funds shall be allotted or allocated not later than the March 31 preceding the program year for which such funds are to be available for obligation.

**(d) Publication in Federal Register relating to discretionary funds**

Whenever the Secretary utilizes a formula to allot or allocate funds made available for distribution at the Secretary’s discretion under this chapter, the Secretary shall, not later than 30 days prior to such allotment or allocation, publish such formula in the Federal Register for comments along with the rationale for the formula and the proposed amounts to be distributed to each State and local area. After consideration of any comments received, the Secretary shall publish final allotments and allocations in the Federal Register.

**(e) Availability of funds**

Funds shall be made available under sections 2853 and 2863 of this title for a local area not later than 30 days after the date the funds are made available to the Governor involved, under section 2852 or 2862 of this title (as the case may be), or 7 days after the date the local plan for the area is approved, whichever is later.

(Pub. L. 105-220, title I, §182, Aug. 7, 1998, 112 Stat. 1041.)

**§ 2933. Monitoring**

**(a) In general**

The Secretary is authorized to monitor all recipients of financial assistance under this chapter to determine whether the recipients are complying with the provisions of this chapter, including the regulations issued under this chapter.

**(b) Investigations**

The Secretary may investigate any matter the Secretary determines to be necessary to determine the compliance of the recipients with this chapter, including the regulations issued under this chapter. The investigations authorized by this subsection may include examining records (including making certified copies of the records), questioning employees, and entering any premises or onto any site in which any part of a program or activity of such a recipient is conducted or in which any of the records of the recipient are kept.

**(c) Additional requirement**

For the purpose of any investigation or hearing conducted under this chapter by the Secretary, the provisions of section 49 of title 15 (relating to the attendance of witnesses and the production of documents) apply to the Secretary, in the same manner and to the same extent as the provisions apply to the Federal Trade Commission.

<sup>1</sup> So in original. No par. (3) has been enacted.

(Pub. L. 105-220, title I, §183, Aug. 7, 1998, 112 Stat. 1042.)

## **§ 2934. Fiscal controls; sanctions**

### **(a) Establishment of fiscal controls by States**

#### **(1) In general**

Each State shall establish such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursement of, and accounting for, Federal funds allocated to local areas under subchapter II of this chapter. Such procedures shall ensure that all financial transactions carried out under subchapter II of this chapter are conducted and records maintained in accordance with generally accepted accounting principles applicable in each State.

#### **(2) Cost principles**

##### **(A) In general**

Each State (including the Governor of the State), local area (including the chief elected official for the area), and provider receiving funds under this chapter shall comply with the applicable uniform cost principles included in the appropriate circulars of the Office of Management and Budget for the type of entity receiving the funds.

##### **(B) Exception**

The funds made available to a State for administration of statewide workforce investment activities in accordance with section 2864(a)(3)(B) of this title shall be allocable to the overall administration of workforce investment activities, but need not be specifically allocable to—

- (i) the administration of adult employment and training activities;
- (ii) the administration of dislocated worker employment and training activities; or
- (iii) the administration of youth activities.

#### **(3) Uniform administrative requirements**

##### **(A) In general**

Each State (including the Governor of the State), local area (including the chief elected official for the area), and provider receiving funds under this chapter shall comply with the appropriate uniform administrative requirements for grants and agreements applicable for the type of entity receiving the funds, as promulgated in circulars or rules of the Office of Management and Budget.

##### **(B) Additional requirement**

Procurement transactions under this chapter between local boards and units of State or local governments shall be conducted only on a cost-reimbursable basis.

#### **(4) Monitoring**

Each Governor of a State shall conduct on an annual basis onsite monitoring of each local area within the State to ensure compliance with the uniform administrative requirements referred to in paragraph (3).

#### **(5) Action by Governor**

If the Governor determines that a local area is not in compliance with the uniform admin-

istrative requirements referred to in paragraph (3), the Governor shall—

- (A) require corrective action to secure prompt compliance; and
- (B) impose the sanctions provided under subsection (b) of this section in the event of failure to take the required corrective action.

#### **(6) Certification**

The Governor shall, every 2 years, certify to the Secretary that—

- (A) the State has implemented the uniform administrative requirements referred to in paragraph (3);
- (B) the State has monitored local areas to ensure compliance with the uniform administrative requirements as required under paragraph (4); and
- (C) the State has taken appropriate action to secure compliance pursuant to paragraph (5).

#### **(7) Action by the Secretary**

If the Secretary determines that the Governor has not fulfilled the requirements of this subsection, the Secretary shall—

- (A) require corrective action to secure prompt compliance; and
- (B) impose the sanctions provided under subsection (e) of this section in the event of failure of the Governor to take the required appropriate action to secure compliance.

### **(b) Substantial violation**

#### **(1) Action by Governor**

If, as a result of financial and compliance audits or otherwise, the Governor determines that there is a substantial violation of a specific provision of this chapter, and corrective action has not been taken, the Governor shall—

- (A) issue a notice of intent to revoke approval of all or part of the local plan affected; or
- (B) impose a reorganization plan, which may include—
  - (i) decertifying the local board involved;
  - (ii) prohibiting the use of eligible providers;
  - (iii) selecting an alternative entity to administer the program for the local area involved;
  - (iv) merging the local area into one or more other local areas; or
  - (v) making other such changes as the Secretary or Governor determines necessary to secure compliance.

#### **(2) Appeal**

##### **(A) In general**

The actions taken by the Governor pursuant to subparagraphs (A) and (B) of paragraph (1) may be appealed to the Secretary and shall not become effective until—

- (i) the time for appeal has expired; or
- (ii) the Secretary has issued a decision.

##### **(B) Additional requirement**

The Secretary shall make a final decision under subparagraph (A) not later than 45 days after the receipt of the appeal.

**(3) Action by the Secretary**

If the Governor fails to promptly take the actions required under paragraph (1), the Secretary shall take such actions.

**(c) Repayment of certain amounts to the United States****(1) In general**

Every recipient of funds under this chapter shall repay to the United States amounts found not to have been expended in accordance with this chapter.

**(2) Offset of repayment**

If the Secretary determines that a State has expended funds made available under this chapter in a manner contrary to the requirements of this chapter, the Secretary may offset repayment of such expenditures against any other amount to which the State is or may be entitled, except as provided under subsection (d)(1) of this section.

**(3) Repayment from deduction by State**

If the Secretary requires a State to repay funds as a result of a determination that a local area of the State has expended funds contrary to the requirements of this chapter, the Governor of the State may use an amount deducted under paragraph (4) to repay the funds, except as provided under subsection (e)(1)<sup>1</sup> of this section.

**(4) Deduction by State**

The Governor may deduct an amount equal to the misexpenditure described in paragraph (3) from subsequent program year allocations to the local area from funds reserved for the administrative costs of the local programs involved, as appropriate.

**(5) Limitations**

A deduction made by a State as described in paragraph (4) shall not be made until such time as the Governor has taken appropriate corrective action to ensure full compliance within such local area with regard to appropriate expenditures of funds under this chapter.

**(d) Repayment of amounts****(1) In general**

Each recipient of funds under this chapter shall be liable to repay the amounts described in subsection (c)(1) of this section, from funds other than funds received under this chapter, upon a determination by the Secretary that the misexpenditure of funds was due to willful disregard of the requirements of this chapter, gross negligence, failure to observe accepted standards of administration, or a pattern of misexpenditure as described in paragraphs (2) and (3) of subsection (c) of this section. No such determination shall be made under this subsection or subsection (c) of this section until notice and opportunity for a fair hearing has been given to the recipient.

**(2) Factors in imposing sanctions**

In determining whether to impose any sanction authorized by this section against a recip-

ient for violations by a subgrantee or contractor of such recipient under this chapter (including the regulations issued under this chapter), the Secretary shall first determine whether such recipient has adequately demonstrated that the recipient has—

(A) established and adhered to an appropriate system for the award and monitoring of grants and contracts with subgrantees and contractors that contains acceptable standards for ensuring accountability;

(B) entered into a written grant agreement or contract with such subgrantee or contractor that established clear goals and obligations in unambiguous terms;

(C) acted with due diligence to monitor the implementation of the grant agreement or contract, including the carrying out of the appropriate monitoring activities (including audits) at reasonable intervals; and

(D) taken prompt and appropriate corrective action upon becoming aware of any evidence of a violation of this chapter, including regulations issued under this chapter, by such subgrantee or contractor.

**(3) Waiver**

If the Secretary determines that the recipient has demonstrated substantial compliance with the requirements of paragraph (2), the Secretary may waive the imposition of sanctions authorized by this section upon such recipient. The Secretary is authorized to impose any sanction consistent with the provisions of this chapter and any applicable Federal or State law directly against any subgrantee or contractor for violation of this chapter, including regulations issued under this chapter.

**(e) Immediate termination or suspension of assistance in emergency situations**

In emergency situations, if the Secretary determines it is necessary to protect the integrity of the funds or ensure the proper operation of the program or activity involved, the Secretary may immediately terminate or suspend financial assistance, in whole or in part, to the recipient if the recipient is given prompt notice and the opportunity for a subsequent hearing within 30 days after such termination or suspension. The Secretary shall not delegate any of the functions or authority specified in this subsection, other than to an officer whose appointment is required to be made by and with the advice and consent of the Senate.

**(f) Discrimination against participants**

If the Secretary determines that any recipient under this chapter has discharged or in any other manner discriminated against a participant or against any individual in connection with the administration of the program involved, or against any individual because such individual has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceeding or investigation under or related to this chapter, or otherwise unlawfully denied to any individual a benefit to which that individual is entitled under the provisions of this chapter or the Secretary's regulations, the Secretary shall, within

<sup>1</sup> So in original. Probably should be subsection "(d)(1)".

30 days, take such action or order such corrective measures, as necessary, with respect to the recipient or the aggrieved individual, or both.

**(g) Remedies**

The remedies described in this section shall not be construed to be the exclusive remedies available for violations described in this section. (Pub. L. 105-220, title I, § 184, Aug. 7, 1998, 112 Stat. 1042.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 2822, 2833, 2936, 2937 of this title.

**§ 2935. Reports; recordkeeping; investigations**

**(a) Reports**

**(1) In general**

Recipients of funds under this chapter shall keep records that are sufficient to permit the preparation of reports required by this chapter and to permit the tracing of funds to a level of expenditure adequate to ensure that the funds have not been spent unlawfully.

**(2) Submission to the Secretary**

Every such recipient shall maintain such records and submit such reports, in such form and containing such information, as the Secretary may require regarding the performance of programs and activities carried out under this chapter. Such records and reports shall be submitted to the Secretary but shall not be required to be submitted more than once each quarter unless specifically requested by Congress or a committee of Congress, in which case an estimate may be provided.

**(3) Maintenance of standardized records**

In order to allow for the preparation of the reports required under subsection (c) of this section, such recipients shall maintain standardized records for all individual participants and provide to the Secretary a sufficient number of such records to provide for an adequate analysis of the records.

**(4) Availability to the public**

**(A) In general**

Except as provided in subparagraph (B), records maintained by such recipients pursuant to this subsection shall be made available to the public upon request.

**(B) Exception**

Subparagraph (A) shall not apply to—

- (i) information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and
- (ii) trade secrets, or commercial or financial information, that is obtained from a person and privileged or confidential.

**(C) Fees to recover costs**

Such recipients may charge fees sufficient to recover costs applicable to the processing of requests for records under subparagraph (A).

**(b) Investigations of use of funds**

**(1) In general**

**(A) Secretary**

In order to evaluate compliance with the provisions of this chapter, the Secretary

shall conduct, in several States, in each fiscal year, investigations of the use of funds received by recipients under this chapter.

**(B) Comptroller General of the United States**

In order to ensure compliance with the provisions of this chapter, the Comptroller General of the United States may conduct investigations of the use of funds received under this chapter by any recipient.

**(2) Prohibition**

In conducting any investigation under this chapter, the Secretary or the Comptroller General of the United States may not request the compilation of any information that the recipient is not otherwise required to compile and that is not readily available to such recipient.

**(3) Audits**

**(A) In general**

In carrying out any audit under this chapter (other than any initial audit survey or any audit investigating possible criminal or fraudulent conduct), either directly or through grant or contract, the Secretary, the Inspector General of the Department of Labor, or the Comptroller General of the United States shall furnish to the State, recipient, or other entity to be audited, advance notification of the overall objectives and purposes of the audit, and any extensive recordkeeping or data requirements to be met, not later than 14 days (or as soon as practicable), prior to the commencement of the audit.

**(B) Notification requirement**

If the scope, objectives, or purposes of the audit change substantially during the course of the audit, the entity being audited shall be notified of the change as soon as practicable.

**(C) Additional requirement**

The reports on the results of such audits shall cite the law, regulation, policy, or other criteria applicable to any finding contained in the reports.

**(D) Rule of construction**

Nothing contained in this chapter shall be construed so as to be inconsistent with the Inspector General Act of 1978 (5 U.S.C. App.) or government auditing standards issued by the Comptroller General of the United States.

**(c) Accessibility of reports**

Each State, each local board, and each recipient (other than a subrecipient, subgrantee, or contractor of a recipient) receiving funds under this chapter—

(1) shall make readily accessible such reports concerning its operations and expenditures as shall be prescribed by the Secretary;

(2) shall prescribe and maintain comparable management information systems, in accordance with guidelines that shall be prescribed by the Secretary, designed to facilitate the uniform compilation, cross tabulation, and analysis of programmatic, participant, and fi-

nancial data, on statewide, local area, and other appropriate bases, necessary for reporting, monitoring, and evaluating purposes, including data necessary to comply with section 2938 of this title; and

(3) shall monitor the performance of providers in complying with the terms of grants, contracts, or other agreements made pursuant to this chapter.

**(d) Information to be included in reports**

**(1) In general**

The reports required in subsection (c) of this section shall include information regarding programs and activities carried out under this chapter pertaining to—

(A) the relevant demographic characteristics (including race, ethnicity, sex, and age) and other related information regarding participants;

(B) the programs and activities in which participants are enrolled, and the length of time that participants are engaged in such programs and activities;

(C) outcomes of the programs and activities for participants, including the occupations of participants, and placement for participants in nontraditional employment;

(D) specified costs of the programs and activities; and

(E) information necessary to prepare reports to comply with section 2938 of this title.

**(2) Additional requirement**

The Secretary shall ensure that all elements of the information required for the reports described in paragraph (1) are defined and reported uniformly.

**(e) Quarterly financial reports**

**(1) In general**

Each local board in the State shall submit quarterly financial reports to the Governor with respect to programs and activities carried out under this chapter. Such reports shall include information identifying all program and activity costs by cost category in accordance with generally accepted accounting principles and by year of the appropriation involved.

**(2) Additional requirement**

Each State shall submit to the Secretary, on a quarterly basis, a summary of the reports submitted to the Governor pursuant to paragraph (1).

**(f) Maintenance of additional records**

Each State and local board shall maintain records with respect to programs and activities carried out under this chapter that identify—

(1) any income or profits earned, including such income or profits earned by subrecipients; and

(2) any costs incurred (such as stand-in costs) that are otherwise allowable except for funding limitations.

**(g) Cost categories**

In requiring entities to maintain records of costs by category under this chapter, the Sec-

retary shall require only that the costs be categorized as administrative or programmatic costs.

(Pub. L. 105-220, title I, §185, Aug. 7, 1998, 112 Stat. 1046.)

REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in subsec. (b)(3)(D), is Pub. L. 95-452, Oct. 12, 1978, 92 Stat. 1101, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

**§ 2936. Administrative adjudication**

**(a) In general**

Whenever any applicant for financial assistance under this chapter is dissatisfied because the Secretary has made a determination not to award financial assistance in whole or in part to such applicant, the applicant may request a hearing before an administrative law judge of the Department of Labor. A similar hearing may also be requested by any recipient for whom a corrective action has been required or a sanction has been imposed by the Secretary under section 2934 of this title.

**(b) Appeal**

The decision of the administrative law judge shall constitute final action by the Secretary unless, within 20 days after receipt of the decision of the administrative law judge, a party dissatisfied with the decision or any part of the decision has filed exceptions with the Secretary specifically identifying the procedure, fact, law, or policy to which exception is taken. Any exception not specifically urged shall be deemed to have been waived. After the 20-day period the decision of the administrative law judge shall become the final decision of the Secretary unless the Secretary, within 30 days after such filing, has notified the parties that the case involved has been accepted for review.

**(c) Time limit**

Any case accepted for review by the Secretary under subsection (b) of this section shall be decided within 180 days after such acceptance. If the case is not decided within the 180-day period, the decision of the administrative law judge shall become the final decision of the Secretary at the end of the 180-day period.

**(d) Additional requirement**

The provisions of section 2937 of this title shall apply to any final action of the Secretary under this section.

(Pub. L. 105-220, title I, §186, Aug. 7, 1998, 112 Stat. 1048.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2937 of this title.

**§ 2937. Judicial review**

**(a) Review**

**(1) Petition**

With respect to any final order by the Secretary under section 2936 of this title by which the Secretary awards, declines to award, or only conditionally awards, financial assistance under his<sup>1</sup> chapter, or any final order of

<sup>1</sup> So in original. Probably should be "this".



the Secretary under section 2936 of this title with respect to a corrective action or sanction imposed under section 2934 of this title, any party to a proceeding which resulted in such final order may obtain review of such final order in the United States Court of Appeals having jurisdiction over the applicant or recipient of funds involved, by filing a review petition within 30 days after the date of issuance of such final order.

**(2) Action on petition**

The clerk of the court shall transmit a copy of the review petition to the Secretary who shall file the record on which the final order was entered as provided in section 2112 of title 28. The filing of a review petition shall not stay the order of the Secretary, unless the court orders a stay. Petitions filed under this subsection shall be heard expeditiously, if possible within 10 days after the date of filing of a reply to the petition.

**(3) Standard and scope of review**

No objection to the order of the Secretary shall be considered by the court unless the objection was specifically urged, in a timely manner, before the Secretary. The review shall be limited to questions of law and the findings of fact of the Secretary shall be conclusive if supported by substantial evidence.

**(b) Judgment**

The court shall have jurisdiction to make and enter a decree affirming, modifying, or setting aside the order of the Secretary in whole or in part. The judgment of the court regarding the order shall be final, subject to certiorari review by the Supreme Court as provided in section 1254(1) of title 28.

(Pub. L. 105-220, title I, §187, Aug. 7, 1998, 112 Stat. 1049.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2936 of this title.

**§ 2938. Nondiscrimination**

**(a) In general**

**(1) Federal financial assistance**

For the purpose of applying the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), on the basis of disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), on the basis of sex under title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), or on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), programs and activities funded or otherwise financially assisted in whole or in part under this Act are considered to be programs and activities receiving Federal financial assistance.

**(2) Prohibition of discrimination regarding participation, benefits, and employment**

No individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with,

any such program or activity because of race, color, religion, sex (except as otherwise permitted under title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.]), national origin, age, disability, or political affiliation or belief.

**(3) Prohibition on assistance for facilities for sectarian instruction or religious worship**

Participants shall not be employed under this chapter to carry out the construction, operation, or maintenance of any part of any facility that is used or to be used for sectarian instruction or as a place for religious worship (except with respect to the maintenance of a facility that is not primarily or inherently devoted to sectarian instruction or religious worship, in a case in which the organization operating the facility is part of a program or activity providing services to participants).

**(4) Prohibition on discrimination on basis of participant status**

No person may discriminate against an individual who is a participant in a program or activity that receives funds under this chapter, with respect to the terms and conditions affecting, or rights provided to, the individual, solely because of the status of the individual as a participant.

**(5) Prohibition on discrimination against certain noncitizens**

Participation in programs and activities or receiving funds under this chapter shall be available to citizens and nationals of the United States, lawfully admitted permanent resident aliens, refugees, asylees, and parolees, and other immigrants authorized by the Attorney General to work in the United States.

**(b) Action of Secretary**

Whenever the Secretary finds that a State or other recipient of funds under this chapter has failed to comply with a provision of law referred to in subsection (a)(1) of this section, or with paragraph (2), (3), (4), or (5) of subsection (a) of this section, including an applicable regulation prescribed to carry out such provision or paragraph, the Secretary shall notify such State or recipient and shall request that the State or recipient comply. If within a reasonable period of time, not to exceed 60 days, the State or recipient fails or refuses to comply, the Secretary may—

(1) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; or

(2) take such other action as may be provided by law.

**(c) Action of Attorney General**

When a matter is referred to the Attorney General pursuant to subsection (b)(1) of this section, or whenever the Attorney General has reason to believe that a State or other recipient of funds under this chapter is engaged in a pattern or practice of discrimination in violation of a provision of law referred to in subsection (a)(1) of this section or in violation of paragraph (2), (3), (4), or (5) of subsection (a) of this section, the Attorney General may bring a civil action in any appropriate district court of the United

States for such relief as may be appropriate, including injunctive relief.

**(d) Job Corps**

For the purposes of this section, Job Corps members shall be considered as the ultimate beneficiaries of Federal financial assistance.

**(e) Regulations**

The Secretary shall issue regulations necessary to implement this section not later than one year after August 7, 1998. Such regulations shall adopt standards for determining discrimination and procedures for enforcement that are consistent with the Acts referred to in a<sup>1</sup> subsection (a)(1) of this section, as well as procedures to ensure that complaints filed under this section and such Acts are processed in a manner that avoids duplication of effort.

(Pub. L. 105-220, title I, §188, Aug. 7, 1998, 112 Stat. 1049.)

REFERENCES IN TEXT

The Age Discrimination Act of 1975, referred to in subsec. (a)(1), is title III of Pub. L. 94-135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§6101 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of Title 42 and Tables.

The Education Amendments of 1972, referred to in subsec. (a)(1), (2), is Pub. L. 92-318, June 23, 1972, 86 Stat. 235, as amended. Title IX of the Act is classified principally to chapter 38 (§1681 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title of 1972 Amendment note set out under section 1001 of Title 20 and Tables.

The Civil Rights Act of 1964, referred to in subsec. (a)(1), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

This Act, referred to in subsec. (a)(1), is Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 936, as amended, known as the Workforce Investment Act of 1998. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2935 of this title.

**§ 2939. Administrative provisions**

**(a) In general**

The Secretary may, in accordance with chapter 5 of title 5, prescribe rules and regulations to carry out this chapter only to the extent necessary to administer and ensure compliance with the requirements of this chapter. Such rules and regulations may include provisions making adjustments authorized by section 6504 of title 31. All such rules and regulations shall be published in the Federal Register at least 30 days prior to their effective dates. Copies of each such rule or regulation shall be transmitted to the appropriate committees of Congress on the date of such publication and shall contain, with respect to each material provision of such rule or regulation, a citation to the particular substantive section of law that is the basis for the provision.

<sup>1</sup> So in original.

**(b) Acquisition of certain property and services**

The Secretary is authorized, in carrying out this chapter, to accept, purchase, or lease in the name of the Department of Labor, and employ or dispose of in furtherance of the purposes of this chapter, any money or property, real, personal, or mixed, tangible or intangible, received by gift, devise, bequest, or otherwise, and to accept voluntary and uncompensated services notwithstanding the provisions of section 1342 of title 31.

**(c) Authority to enter into certain agreements and to make certain expenditures**

The Secretary may make such grants, enter into such contracts or agreements, establish such procedures, and make such payments, in installments and in advance or by way of reimbursement, or otherwise allocate or expend such funds under this chapter, as may be necessary to carry out this chapter, including making expenditures for construction, repairs, and capital improvements, and including making necessary adjustments in payments on account of overpayments or underpayments.

**(d) Annual report**

The Secretary shall prepare and submit to Congress an annual report regarding the programs and activities carried out under this chapter. The Secretary shall include in such report—

- (1) a summary of the achievements, failures, and problems of the programs and activities in meeting the objectives of this chapter;
- (2) a summary of major findings from research, evaluations, pilot projects, and experiments conducted under this chapter in the fiscal year prior to the submission of the report;
- (3) recommendations for modifications in the programs and activities based on analysis of such findings; and
- (4) such other recommendations for legislative or administrative action as the Secretary determines to be appropriate.

**(e) Utilization of services and facilities**

The Secretary is authorized, in carrying out this chapter, under the same procedures as are applicable under subsection (c) of this section or to the extent permitted by law other than this chapter, to accept and use the services and facilities of departments, agencies, and establishments of the United States. The Secretary is also authorized, in carrying out this chapter, to accept and use the services and facilities of the agencies of any State or political subdivision of a State, with the consent of the State or political subdivision.

**(f) Obligational authority**

Notwithstanding any other provision of this chapter, the Secretary shall have no authority to enter into contracts, grant agreements, or other financial assistance agreements under this chapter except to such extent and in such amounts as are provided in advance in appropriations Acts.

**(g) Program year**

**(1) In general**

**(A) Program year**

Except as provided in subparagraph (B), appropriations for any fiscal year for pro-

grams and activities carried out under this chapter shall be available for obligation only on the basis of a program year. The program year shall begin on July 1 in the fiscal year for which the appropriation is made.

**(B) Youth activities**

The Secretary may make available for obligation, beginning April 1 of any fiscal year, funds appropriated for such fiscal year to carry out youth activities under subchapter II of this chapter.

**(2) Availability**

Funds obligated for any program year for a program or activity carried out under this chapter may be expended by each State receiving such funds during that program year and the 2 succeeding program years. Funds obligated for any program year for a program or activity carried out under section 2916 or 2917 of this title shall remain available until expended. Funds received by local areas from States under this chapter during a program year may be expended during that program year and the succeeding program year. No amount of the funds described in this paragraph shall be deobligated on account of a rate of expenditure that is consistent with a State plan, an operating plan described in section 2891 of this title, or a plan, grant agreement, contract, application, or other agreement described in subchapter IV of this chapter, as appropriate.

**(h) Enforcement of Military Selective Service Act**

The Secretary shall ensure that each individual participating in any program or activity established under this chapter, or receiving any assistance or benefit under this chapter, has not violated section 3 of the Military Selective Service Act (50 U.S.C. App. 453) by not presenting and submitting to registration as required pursuant to such section. The Director of the Selective Service System shall cooperate with the Secretary to enable the Secretary to carry out this subsection.

**(i) Waivers and special rules**

**(1) Existing waivers**

With respect to a State that has been granted a waiver under the provisions relating to training and employment services of the Department of Labor in title I of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1998 (Public Law 105-78; 111 Stat. 1467), the authority provided under such waiver shall continue in effect and apply, and include a waiver of the related provisions of subchapter II of this chapter and this subchapter, for the duration of the initial waiver.

**(2) Special rule regarding designated areas**

A State that has enacted, not later than December 31, 1997, a State law providing for the designation of service delivery areas for the delivery of workforce investment activities, may use such areas as local areas under this chapter, notwithstanding section 2831 of this title.

**(3) Special rule regarding sanctions**

A State that enacts, not later than December 31, 1997, a State law providing for the sanc-

tioning of such service delivery areas for failure to meet performance measures for workforce investment activities, may use the State law to sanction local areas for failure to meet State performance measures under this chapter.

**(4) General waivers of statutory or regulatory requirements**

**(A) General authority**

Notwithstanding any other provision of law, the Secretary may waive for a State, or a local area in a State, pursuant to a request submitted by the Governor of the State (in consultation with appropriate local elected officials) that meets the requirements of subparagraph (B)—

(i) any of the statutory or regulatory requirements of subchapter II of this chapter or this subchapter (except for requirements relating to wage and labor standards, including nondisplacement protections, worker rights, participation and protection of workers and participants, grievance procedures and judicial review, nondiscrimination, allocation of funds to local areas, eligibility of providers or participants, the establishment and functions of local areas and local boards, and procedures for review and approval of plans); and

(ii) any of the statutory or regulatory requirements of sections 49g through 49i of this title (excluding requirements relating to the provision of services to unemployment insurance claimants and veterans, and requirements relating to universal access to basic labor exchange services without cost to jobseekers).

**(B) Requests**

A Governor requesting a waiver under subparagraph (A) shall submit a plan to the Secretary to improve the statewide workforce investment system that—

(i) identifies the statutory or regulatory requirements that are requested to be waived and the goals that the State or local area in the State, as appropriate, intends to achieve as a result of the waiver;

(ii) describes the actions that the State or local area, as appropriate, has undertaken to remove State or local statutory or regulatory barriers;

(iii) describes the goals of the waiver and the expected programmatic outcomes if the request is granted;

(iv) describes the individuals impacted by the waiver; and

(v) describes the process used to monitor the progress in implementing such a waiver, and the process by which notice and an opportunity to comment on such request has been provided to the local board.

**(C) Conditions**

Not later than 90 days after the date of the original submission of a request for a waiver under subparagraph (A), the Secretary shall provide a waiver under this paragraph if and only to the extent that—

(i) the Secretary determines that the requirements requested to be waived impede

the ability of the State or local area, as appropriate, to implement the plan described in subparagraph (B); and

(ii) the State has executed a memorandum of understanding with the Secretary requiring such State to meet, or ensure that the local area meets, agreed-upon outcomes and to implement other appropriate measures to ensure accountability.

(Pub. L. 105-220, title I, §189, Aug. 7, 1998, 112 Stat. 1051; Pub. L. 105-277, div. A, §101(f) [title VIII, §401(13)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-411.)

#### REFERENCES IN TEXT

Title I of the Departments of Labor, Health and Human Services, and Education, and related Agencies Appropriations Act, 1998, referred to in subsec. (i)(1), is title I of Pub. L. 105-78, Nov. 13, 1997, 111 Stat. 1467.

#### CODIFICATION

In subsec. (a), “section 6504 of title 31” substituted for “section 204 of the Intergovernmental Cooperation Act of 1968” on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

#### AMENDMENTS

1998—Subsec. (i)(1). Pub. L. 105-277 substituted “1998 (Public Law 105-78; 111 Stat. 1467)” for “1997 (Public Law 104-208; 110 Stat. 3009-234)”. The substitution was made to reflect the probable intent of Congress, in the absence of closing quotation marks designating the provisions to be inserted.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2911, 2932 of this title.

### § 2940. References

#### (a) References to Comprehensive Employment and Training Act

Except as otherwise specified, a reference in a Federal law (other than a reference in a provision amended by the Reading Excellence Act) to a provision of the Comprehensive Employment and Training Act—

(1) effective on August 7, 1998, shall be deemed to refer to the corresponding provision of the Job Training Partnership Act [29 U.S.C. 1501 et seq.] or of the Workforce Investment Act of 1998; and

(2) effective on July 1, 2000, shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998.

#### (b) References to Job Training Partnership Act

Except as otherwise specified, a reference in a Federal law (other than a reference in this Act or a reference in a provision amended by the Reading Excellence Act) to a provision of the Job Training Partnership Act [29 U.S.C. 1501 et seq.]—

(1) effective on August 7, 1998, shall be deemed to refer to that provision or the corresponding provision of the Workforce Investment Act of 1998; and

(2) effective on July 1, 2000, shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998.

(Pub. L. 105-220, title I, §190, Aug. 7, 1998, 112 Stat. 1054; Pub. L. 105-277, div. A, §101(f) [title

VIII, §405(h)(1)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-435.)

#### REFERENCES IN TEXT

The Comprehensive Employment and Training Act, referred to in subsec. (a), is Pub. L. 93-203, Dec. 28, 1973, 87 Stat. 839, as amended, which was classified generally to chapter 17 (§801 et seq.) of this title, and was repealed by section 184(a)(1) of the Job Training Partnership Act, Pub. L. 97-300, title I, Oct. 13, 1982, 96 Stat. 1357.

The Reading Excellence Act, referred to in text, is section 101(f) [title VIII] of Pub. L. 105-277, div. A, Oct. 21, 1998, 112 Stat. 2681-337, 2681-391. The provisions of title VIII of section 101(f) appear at 112 Stat. 2681-391 to 2681-435. For complete classification of this Act to the Code, see Tables.

The Job Training Partnership Act, referred to in text, is Pub. L. 97-300, Oct. 13, 1982, 96 Stat. 1322, as amended, which is classified generally to chapter 19 (§1501 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of this title and Tables.

The Workforce Investment Act of 1998, referred to in text, is Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 936, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

This Act, referred to in subsec. (b), is the Workforce Investment Act of 1998. See note above.

#### AMENDMENTS

1998—Pub. L. 105-277 amended section catchline and text generally. Prior to amendment, text read as follows: “Effective on August 7, 1998, all references in any other provision of law (other than section 665 of title 18) to the Comprehensive Employment and Training Act, or to the Job Training Partnership Act, as the case may be, shall be deemed to refer to the ‘Workforce Investment Act of 1998.’”

#### EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-277, div. A, §101(f) [title VIII, §405(h)(2)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-435, provided that: “The amendment made by paragraph (1) [amending this section] shall take effect as if included in the Workforce Investment Act of 1998 [Pub. L. 105-220].”

#### PREPARATION OF LEGISLATION TO MAKE TECHNICAL AND CONFORMING AMENDMENTS

Pub. L. 105-220, title I, §199A, Aug. 7, 1998, 112 Stat. 1059, as amended by Pub. L. 105-277, div. A, §101(f) [title VIII, §405(h)(3)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-435, provided that:

“(a) PREPARATION.—After consultation with the appropriate committees of Congress and the Director of the Office of Management and Budget, the Secretary shall prepare recommended legislation containing technical and conforming amendments to reflect the changes made by this subtitle [subtitle F (§§199, 199A) of title I of Pub. L. 105-220, repealing sections 1501 to 1505, 1511 to 1583, 1592 to 1735, 1737, 1751 to 1791h, 1792 to 1792b, and 2301 to 2314 of this title, section 211 of Title 40, Appendix, Public Buildings, Property, and Works, sections 11421, 11441 to 11447, 11449, 11450, 11461 to 11466, 11471, and 11472 of Title 42, The Public Health and Welfare, and sections 42101 to 42106 of Title 49, Transportation, enacting provisions set out as notes under sections 1501 and 2301 of this title and section 11421 of Title 42, and repealing provisions set out as notes under sections 1501 and 2301 of this title and section 1255a of Title 8, Aliens and Nationality].

“(b) SUBMISSION TO CONGRESS.—Not later than 6 months after the date of enactment of this Act [Aug. 7, 1998], the Secretary shall submit to Congress the recommended legislation referred to under subsection (a).”

**§ 2941. State legislative authority****(a) Authority of State legislature**

Nothing in this chapter shall be interpreted to preclude the enactment of State legislation providing for the implementation, consistent with the provisions of this chapter, of the activities assisted under this chapter. Any funds received by a State under this chapter shall be subject to appropriation by the State legislature, consistent with the terms and conditions required under this chapter.

**(b) Interstate compacts and cooperative agreements**

In the event that compliance with provisions of this chapter would be enhanced by compacts and cooperative agreements between States, the consent of Congress is given to States to enter into such compacts and agreements to facilitate such compliance, subject to the approval of the Secretary.

(Pub. L. 105-220, title I, §191, Aug. 7, 1998, 112 Stat. 1054.)

**§ 2942. Workforce flexibility plans****(a) Plans**

A State may submit to the Secretary, and the Secretary may approve, a workforce flexibility plan under which the State is authorized to waive, in accordance with the plan—

(1) any of the statutory or regulatory requirements applicable under this chapter to local areas, pursuant to applications for such waivers from the local areas, except for requirements relating to the basic purposes of this chapter, wage and labor standards, grievance procedures and judicial review, non-discrimination, eligibility of participants, allocation of funds to local areas, establishment and functions of local areas and local boards, review and approval of local plans, and worker rights, participation, and protection;

(2) any of the statutory or regulatory requirements applicable under sections 49g through 49i of this title to the State, except for requirements relating to the provision of services to unemployment insurance claimants and veterans, and to universal access to basic labor exchange services without cost to jobseekers; and

(3) any of the statutory or regulatory requirements applicable under the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.) to State agencies on aging with respect to activities carried out using funds allotted under section 506(a)(3) of such Act (42 U.S.C. 3056d(a)(3)), except for requirements relating to the basic purposes of such Act, wage and labor standards, eligibility of participants in the activities, and standards for agreements.

**(b) Content of plans**

A workforce flexibility plan implemented by a State under subsection (a) of this section shall include descriptions of—

(1)(A) the process by which local areas in the State may submit and obtain approval by the State of applications for waivers of requirements applicable under this chapter; and

(B) the requirements described in subparagraph (A) that are likely to be waived by the State under the plan;

(2) the requirements applicable under sections 49g through 49i of this title that are proposed to be waived, if any;

(3) the requirements applicable under the Older Americans Act of 1965 [42 U.S.C. 3001 et seq.] that are proposed to be waived, if any;

(4) the outcomes to be achieved by the waivers described in paragraphs (1) through (3); and

(5) other measures to be taken to ensure appropriate accountability for Federal funds in connection with the waivers.

**(c) Periods**

The Secretary may approve a workforce flexibility plan for a period of not more than 5 years.

**(d) Opportunity for public comments**

Prior to submitting a workforce flexibility plan to the Secretary for approval, the State shall provide to all interested parties and to the general public adequate notice and a reasonable opportunity for comment on the waiver requests proposed to be implemented pursuant to such plan.

(Pub. L. 105-220, title I, §192, Aug. 7, 1998, 112 Stat. 1054; Pub. L. 105-277, div. A, §101(f) [title VIII, §401(14)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-411.)

## REFERENCES IN TEXT

The Older Americans Act of 1965, referred to in subsecs. (a)(3) and (b)(3), is Pub. L. 89-73, July 14, 1965, 79 Stat. 218, as amended, which is classified generally to chapter 35 (§3001 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of Title 42 and Tables.

## AMENDMENTS

1998—Subsec. (a)(2). Pub. L. 105-277 struck out comma before “to the State, except”.

Subsec. (a)(3). Pub. L. 105-277 substituted “) to” for “), to”.

**§ 2943. Use of certain real property****(a) In general**

Notwithstanding any other provision of law, the Governor may authorize a public agency to make available, for the use of a one-stop service delivery system within the State which is carried out by a consortium of entities that includes the public agency, real property in which, as of August 7, 1998, the Federal Government has acquired equity through the use of funds provided under title III of the Social Security Act (42 U.S.C. 501 et seq.), section 903(c) of such Act (42 U.S.C. 1103(c)), or the Wagner-Peyser Act (29 U.S.C. 49 et seq.).

**(b) Use of funds**

Subsequent to the commencement of the use of the property described in subsection (a) of this section for the functions of a one-stop service delivery system, funds provided under the provisions of law described in subsection (a) of this section may only be used to acquire further equity in such property, or to pay operating and maintenance expenses relating to such property in proportion to the extent of the use of such property attributable to the activities authorized under such provisions of law.

(Pub. L. 105-220, title I, §193, Aug. 7, 1998, 112 Stat. 1055.)

## REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title III of the Act is classified generally to subchapter III (§501 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Wagner-Peyser Act, referred to in subsec. (a), is act June 6, 1933, ch. 49, 48 Stat. 113, as amended, which is classified generally to chapter 4B (§49 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 49 of this title and Tables.

#### § 2944. Continuation of State activities and policies

##### (a) In general

Notwithstanding any other provision of this chapter, the Secretary may not deny approval of a State plan for a covered State, or an application of a covered State for financial assistance, under this chapter or find a covered State (including a State board or Governor), or a local area (including a local board or chief elected official) in a covered State, in violation of a provision of this chapter, on the basis that—

(1)(A) the State proposes to allocate or disburse, allocates, or disburses, within the State, funds made available to the State under section 2852 or 2862 of this title in accordance with the allocation formula for the type of activities involved, or in accordance with a disbursement procedure or process, used by the State under prior consistent State laws; or

(B) a local board in the State proposes to disburse, or disburses, within the local area, funds made available to a State under section 2852 or 2862 of this title in accordance with a disbursement procedure or process used by a private industry council under prior consistent State law;

(2) the State proposes to carry out or carries out a State procedure through which local areas use, as fiscal agents for funds made available to the State under section 2852 or 2862 of this title and allocated within the State, fiscal agents selected in accordance with a process established under prior consistent State laws;

(3) the State proposes to carry out or carries out a State procedure through which the local board in the State (or the local boards, the chief elected officials in the State, and the Governor) designate or select the one-stop partners and one-stop operators of the statewide system in the State under prior consistent State laws, in lieu of making the designation, or certification described in section 2841 of this title (regardless of the date the one-stop delivery systems involved have been established);

(4) the State proposes to carry out or carries out a State procedure through which the persons responsible for selecting eligible providers for purposes of subchapter II of this chapter are permitted to determine that a provider shall not be selected to provide both intake services under section 2864(d)(2) of this title and training services under section 2864(d)(4) of this title, under prior consistent State laws;

(5) the State proposes to designate or designates a State board, or proposes to assign or

assigns functions and roles of the State board (including determining the time periods for development and submission of a State plan required under section 2822 of this title), for purposes of subchapter II of this chapter in accordance with prior consistent State laws; or

(6) a local board in the State proposes to use or carry out, uses, or carries out a local plan (including assigning functions and roles of the local board) for purposes of subchapter II of this chapter in accordance with the authorities and requirements applicable to local plans and private industry councils under prior consistent State laws.

##### (b) Definition

In this section:

##### (1) Covered State

The term “covered State” means a State that enacted State laws described in paragraph (2).

##### (2) Prior consistent State laws

The term “prior consistent State laws” means State laws, not inconsistent with the Job Training Partnership Act [29 U.S.C. 1501 et seq.] or any other applicable Federal law, that took effect on September 1, 1993, September 1, 1995, and September 1, 1997.

(Pub. L. 105-220, title I, §194, Aug. 7, 1998, 112 Stat. 1056.)

## REFERENCES IN TEXT

The Job Training Partnership Act, referred to in subsec. (b)(2), is Pub. L. 97-300, Oct. 13, 1982, 96 Stat. 1322, as amended, which is classified generally to chapter 19 (§1501 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of this title and Tables.

#### § 2945. General program requirements

Except as otherwise provided in this chapter, the following conditions are applicable to all programs under this chapter:

(1) Each program under this chapter shall provide employment and training opportunities to those who can benefit from, and who are most in need of, such opportunities. In addition, efforts shall be made to develop programs which contribute to occupational development, upward mobility, development of new careers, and opportunities for nontraditional employment.

(2) Funds provided under this chapter shall only be used for activities that are in addition to those that would otherwise be available in the local area in the absence of such funds.

(3)(A) Any local area may enter into an agreement with another local area (including a local area that is a city or county within the same labor market) to pay or share the cost of educating, training, or placing individuals participating in programs assisted under this chapter, including the provision of supportive services.

(B) Such agreement shall be approved by each local board providing guidance to the local area and shall be described in the local plan under section 2833 of this title.

(4) On-the-job training contracts under this chapter shall not be entered into with employ-

ers who have received payments under previous contracts and have exhibited a pattern of failing to provide on-the-job training participants with continued long-term employment as regular employees with wages and employment benefits (including health benefits) and working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same type of work.

(5) No person or organization may charge an individual a fee for the placement or referral of the individual in or to a workforce investment activity under this chapter.

(6) The Secretary shall not provide financial assistance for any program under this chapter that involves political activities.

(7)(A) Income under any program administered by a public or private nonprofit entity may be retained by such entity only if such income is used to continue to carry out the program.

(B) Income subject to the requirements of subparagraph (A) shall include—

(i) receipts from goods or services (including conferences) provided as a result of activities funded under this chapter;

(ii) funds provided to a service provider under this chapter that are in excess of the costs associated with the services provided; and

(iii) interest income earned on funds received under this chapter.

(C) For purposes of this paragraph, each entity receiving financial assistance under this chapter shall maintain records sufficient to determine the amount of such income received and the purposes for which such income is expended.

(8)(A) The Secretary shall notify the Governor and the appropriate local board and chief elected official of, and consult with the Governor and such board and official concerning, any activity to be funded by the Secretary under this chapter within the corresponding State or local area.

(B) The Governor shall notify the appropriate local board and chief elected official of, and consult with such board and official concerning, any activity to be funded by the Governor under this chapter within the corresponding local area.

(9)(A) All education programs for youth supported with funds provided under part D of subchapter II of this chapter shall be consistent with applicable State and local educational standards.

(B) Standards and procedures with respect to awarding academic credit and certifying educational attainment in programs conducted under such part shall be consistent with the requirements of applicable State and local law, including regulation.

(10) No funds available under this chapter may be used for public service employment except as specifically authorized under this chapter.

(11) The Federal requirements governing the chapter, use, and disposition of real property, equipment, and supplies purchased with funds provided under this chapter shall be the Fed-

eral requirements generally applicable to Federal grants to States and local governments.

(12) Nothing in this chapter shall be construed to provide an individual with an entitlement to a service under this chapter.

(13) Services, facilities, or equipment funded under this chapter may be used, as appropriate, on a fee-for-service basis, by employers in a local area in order to provide employment and training activities to incumbent workers—

(A) when such services, facilities, or equipment are not in use for the provision of services for eligible participants under this chapter;

(B) if such use for incumbent workers would not have an adverse effect<sup>1</sup> on the provision of services to eligible participants under this chapter; and

(C) if the income derived from such fees is used to carry out the programs authorized under this chapter.

(Pub. L. 105-220, title I, §195, Aug. 7, 1998, 112 Stat. 1057.)

## CHAPTER 31—ASSISTIVE TECHNOLOGY FOR INDIVIDUALS WITH DISABILITIES

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(a) Findings.

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(a) Definitions.

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### SUBCHAPTER II—NATIONAL ACTIVITIES

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<sup>1</sup> So in original. Probably should be "effect".